

EU Procedural Rights in Criminal Proceedings

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Justice Freedom and Security

EU Procedural Rights in Criminal Proceedings

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Report on EU Procedural Rights in Criminal Proceedings

Annex 1: Study on Procedural Rights:

Existing Level of Safeguards in Member States 2008 – Update

Annex 2: EU PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

Complete overview of diagrams

Annex 3: EU PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

Complete answers

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This report and the annexes 1, 2 and 3 with the complete research data will be available online: <http://arno.unimaas.nl/show.cgi?fid=16315>

The report was finalised on 8 September 2009

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List of Abbreviations:

CPT	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECmHR	European Commission of Human Rights
EU	European Union
Green Paper	Green Paper from the Commission on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union 19 February 2003, COM (2003) 75 final
ICCPR	International Convention on Civil and Political Rights
Proposed FD	Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, 28 April 2004, COM (2004) 328 final, 2004/0113 (CNS)

Executive Summary

Procedural rights in criminal proceedings have received an increasing amount of attention in the European Union over the last couple of years and are the central topic of this research project.

All EU Member States are party to the European Convention on Human Rights, which is the principal treaty setting out the basic standards for suspects' procedural rights in criminal proceedings in the EU. However, divergent practices in different Member States have hitherto hindered mutual trust and confidence, principles put forward by the 1999 Tampere Conclusions¹, between them. In order to counter this obstacle identified by the European Commission in its 2003 Green Paper on "Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the EU"², the Commission held that the EU is justified in taking action in this field. Member States had also expressed the need and wish for cooperation in the matter on a European level. However, the ideas in the 2004 "Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union" have not yet sparked any political agreement on the matter.

In 2005, the Commission arranged for a study to be carried out on procedural rights in the EU, in order to comply with the The Hague Programme's call for studies on the existing levels of safeguards in the Member States.³

This study has been carried out as a follow-up report to the 2005 study to obtain up to date information on the level of provision of procedural rights in the Member States that can provide a lead for a possible new Commission legal initiative on the matter. The report aims at providing an overview of the *status quo* of 4 fundamental procedural rights in criminal proceedings in the EU Member States:

- The right to information,
- The right to legal advice,
- The right to legal assistance free of charge,
- The right to translation and interpretation of documents

¹ See G. Vernimmen-Van Tiggelen and Laura Surano, Analysis of the future of mutual recognition in criminal matters in the European Union, 20 November 2008.

² Green Paper from the Commission 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union', Brussels, 19 February 2003, COM (2003) 75 final.

³ T.N.B.M. Spronken and M. Attinger, Procedural Rights in criminal proceedings: Existing Level of Safeguards in the European Union, funded and published by the European Commission, 12 December 2005 <<http://arno.unimaas.nl/show.cgi?fid=3891>>

First, an analysis is offered of these procedural rights which the European Convention on Human Rights provides for, as dealt with in recent case law of the European Court of Human Rights. Secondly, the report paints a picture of the extent to which these procedural rights are guaranteed in the formal legislation of each EU Member State. This overview was obtained through an extensive questionnaire⁴ which was sent out to all 27 EU Member States. The questionnaire also included questions on how the examined procedural rights are dealt with in the Member States within procedures concerning the European Arrest Warrant (EAW) and other mutual recognition instruments. The right to information was dealt with in the questionnaire as an overarching horizontal issue and not as a separate right, as is the case for the analysis of the European Court of Human Rights-case law. Therefore, the questionnaire was divided into the following chapters:

- Chapter 1: The right to legal advice
- Chapter 2: The right to legal assistance (partially) free of charge
- Chapter 3: The right to translation of documents and the right to interpretation
- Chapter 4: Other fundamental guarantees and the right to be informed on them
- Chapter 5: European Arrest Warrant and other mutual recognition instruments

The conclusions drawn in the study are based on the answers as provided for by the representatives of the Ministries of Justice of the Member States. It is important to note that the project team has not carried out any research on the accuracy of these answers. All Member States replied to the questionnaire except for Malta, so the conclusions are based on the information given by 26 Member States.

The following conclusions were reached:

The right to information

In this study, the right to information is dealt with as an overarching horizontal issue that is highly relevant for procedural rights being practical and effective. We have distinguished 2 dimensions. First, the right of anyone charged with a criminal offence to be informed on the nature and cause of the accusations against him and to have access to the evidence on which these accusations are based as guaranteed by Art. 5 and 6 ECHR. Secondly, the right to information in the sense of being informed on fundamental procedural rights, which as such is not covered by the ECHR.

A notable finding of this study is the fact that the right to remain silent is no statutory right in France and Luxembourg and the right to have access to the file is not provided for on

⁴ See annex 1

behalf of the suspect in legislation in Estonia, France, Germany and Spain, both being basic requirements of a fair trial in the ECHR.

A remark applicable to all the rights that are object of this study (including the right to be informed on the charge) is the substantial divergence in the way suspects are informed as well as the absence of legal obligations for the authorities to inform the suspect on these fundamental procedural rights.

With regard to the right to contact a lawyer after arrest, all Member States have a legal obligation to inform the suspect on this right, but this information is not always given immediately after arrest. Also, the moment at which the obligation exists to inform the suspect of his right to have a lawyer present during police interrogation varies from promptly after arrest until a later stage in the investigation or proceedings. This right is obviously only effective when the suspect is timely informed on it and if he is offered the opportunity to contact a lawyer before the first police interrogation. In many Member States where there is a right to legal assistance during police interrogation, there are no provisions to secure the effectuation of this right.

The same applies to information on the right to legal aid. In 4 Member States there is no legal obligation to inform the suspect of the right to legal assistance (partially) free of charge and in the remainder of the Member States where a legal obligation to inform the suspect does exist, the moment at which the duty arises varies considerably as well as the manner in which the information is given. In the majority of the countries the information is given orally and in only 4 countries this information is provided in a letter of rights.

A similar picture can be drawn with regard to information on the right to interpretation and translation. In 8 Member States there is no legal obligation to inform the suspect on his right to interpretation and in 9 Member States there is no obligation to inform the suspect on his right to translation.

Striking is that in Belgium and Finland there is no legal obligation to inform the suspect of his right to silence and in 6 Member States there is no obligation to inform the suspect of his right to call and examine witnesses.

In 10 Member States the suspect is informed about (one or more of) his rights by means of a letter of rights (Austria, Czech Republic, England and Wales, Italy, Latvia, Luxemburg, Poland, Slovak Republic, Spain and Sweden). However, there are great differences between these EU Member States as to which rights are included. Many letters of rights do not mention the right to silence or the right to translation or interpretation and sometimes there is no letter of rights available in the language the suspect understands.

The right to legal assistance

According to the case law of the ECtHR the right to contact a legal advisor – as part of the general right to legal assistance which is covered by Art. 6 § 3 b and c ECHR – arises immediately upon arrest. The study shows that the right to contact a lawyer after arrest exists in most Member States. However, there is a great divergence as to the moment at which the right to contact a lawyer can be effected. For example, in a considerable number of countries this is not possible immediately after arrest – as required by the ECHR – but only at a given stage of the investigation or the proceedings.

Also, it follows from recent judgments of the ECtHR that access to a lawyer should as a rule be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of the case that there are compelling reasons to restrict this right. Furthermore, the ECtHR has held that the lack of legal assistance during a suspect's interrogation would constitute a restriction of his defence rights and that these rights will in principle be irretrievably prejudiced when incriminating statements, made during police interrogation without access to a lawyer, are used for a conviction.

It can be concluded from the study that the basic rules mentioned above are not common practice throughout the EU: in 4 Member States the right to consult a lawyer before questioning is not guaranteed⁵ and in 5 Member States there is no right for the lawyer to be present at interrogations carried out by the police. In almost all countries where the lawyer is allowed to be present, authorities are obliged to inform the suspect of this right but there are considerable differences among Member States as to the moment at which the obligation to inform the suspect of this right arises and the way in which the information is provided to the suspect. Furthermore, in several countries there is no possibility for the defence to deliberate in private during questioning. Finally, the study shows that the presence of a lawyer at the interrogation is not deemed indispensable; only in 3 Member States it is not allowed using the confession of a suspect made in the absence of his lawyer as evidence in court.

⁵ In the Netherlands this has changed as a result of the *Salduz* judgment of the ECtHR Grand Chamber, 27 November 2008, *Salduz* (no. 36391/02). Requested to give an interpretation of the consequences of this judgment for the Dutch practice the Supreme Court of the Netherlands ruled on 30 June 2009 that a suspect has the right to consult a lawyer before the first police interrogation, but that only a juvenile suspect has the right to also have a lawyer present during police interrogation (HR 30 June 2009, no. 2411.08 J, NbSr 2009, 249).

The right to legal assistance (partially) free of charge

With respect to the right to legal assistance (partially) free of charge – as guaranteed by Art. 6 § 3 c ECHR – it follows from the case law of the ECtHR that Member States have a certain margin of appreciation in choosing a system that appears to them to be most effective. However, free legal assistance should always be available where the interests of justice demand it. The study shows that although the right to legal assistance (partially) free of charge exists in all Member States (with the exception of one) there are considerable differences in the implementation of this right. Especially striking is the wide variety in merits and/or means tests. Also important is the fact that in a small number of countries there is no legal obligation to inform the suspect of his right to legal assistance (partially) free of charge. Where this obligation does exist, there is considerable variation as to the scope of this obligation. Besides the differences in the applicable legal frameworks regulating the right to legal assistance free of charge, the study also shows enormous differences in financial recourses available for legal aid. The remarkable low budgets of some countries raise the question whether despite existing guarantees in the applicable legal framework, it is – in everyday practice – in fact possible to effectuate the right to free legal assistance whenever the interest of justice demands it.

Quality of legal assistance (partially) free of charge

The study allows making some remarks as to the quality of the legal assistance (partially) free of charge and the responsibilities of the State in this respect. Although it is clear from the case law of the ECtHR that the lawyer's conduct is essentially an affair between the lawyer and his client, the State is under the obligation to ensure that legal assistance is effective. As a result, the Member States need to provide for some sort of monitoring system. The study shows that in a considerable number of countries there are no mechanisms to control the quality of legal assistance free of charge and in other Member States the authorities carrying out this kind of control vary widely. Consequently, there seems to be a substantial divergence in the way the quality of free legal assistance is controlled and ensured. Also, the 'special' requirements for the lawyer providing legal assistance free of charge are, in many cases, of a rather general nature and not limited to providing legal assistance free of charge. Moreover, in the majority of countries the specialisation and the availability of the lawyer are not taken into account when deciding on which lawyer to appoint to a case.

These findings raise the question on whether or not the quality of legal assistance (partially) free of charge is in fact sufficiently guaranteed throughout the EU.

The right to interpretation and translation

Although the right to interpretation exists in all Member States, the right to translation of documents is guaranteed in all but 5 Member States. The analysis shows a great divergence

regarding the implementation of these rights. This divergence specifically applies to whether there is a legal obligation to be informed on these rights and to the scope of the rights. In 5 Member States there is no provision for interpretation at the consultation of the suspect with his lawyer and some Member States have no provisions for suspects who are visually impaired or hearing impaired. There is also a considerable variety as to which documents have to be provided to the suspect, and what documents are translated. It appears from the study that only a slight majority of the Member States provides a written translation of the charge, the detention order, or the final judgment. A letter of rights is only translated in 4 of the 10 countries that provide for one. The results of the study show that on the level of practical implementation of the right to interpretation and translation there is a divergence with the requirements that derive from the case law of the ECtHR as summarised in § 2.4.

Procedural rights in the mutual recognition instruments

When comparing the results of the analysis between the various mutual recognition instruments, some main findings can be distinguished quite easily. Firstly, the European Arrest Warrant (EAW) clearly is the instrument that is treated the most as being equal to the domestic proceedings. The right to legal advice, for example, is applied to EAW proceedings in all Member States in the same way as for domestic cases. Secondly, conclusions as to the 'partial' application of certain rights in regard of mutual recognition instruments should be made with caution since some Member States have responded in this way whereas the particular instrument has not yet been implemented into national law. Thirdly, those Member States not applying certain rights with regards to the various mutual recognition instruments are often the same. Finally, the great majority of Member States apply the right to information on fundamental procedural guarantees to the mutual recognition proceedings equally as for domestic proceedings.

Overall conclusion

A striking finding is the fact that fundamental rights such as the right to remain silent, to have access to the file and to call and/or examine witnesses or experts, which are basic requirements of a fair trial in the ECHR, are not provided for in the legislation of all Member States.

In general, it follows from the study that although the 4 procedural rights that were the subject of this research – the right to information, the right to legal advice, the right to legal assistance (partially) free of charge and the right to interpretation and translation – seem to be guaranteed by law more or less in accordance with the ECHR in the criminal justice systems of the EU. However, a more in depth look at the implementation of these rights raises doubts as to whether in all Member States everyday practice is in line with the Strasbourg standard. This underlines the need for EU action.

1 Introduction

1.1 Background

Even though all EU Member States are party to the ECHR (the principal treaty setting out the basic standards for suspects' procedural rights in the EU), divergent practices have hitherto hindered mutual trust and confidence, the principles put forward by the 1999 Tampere Conclusions.⁶ In order to counter this obstacle identified by the European Commission in its 2003 Green Paper on "Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the EU"⁷, the Commission held that the EU is justified in taking action in this field. Indeed, higher visibility and transparency would improve understanding on the part of all actors in the criminal justice systems in the Member States. The ideas in the 2004 "Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union"⁸ (further referred to as 'the 2004 proposal'), where reiterated in the The Hague Programme, which states that "the further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceeding, based on the studies of the existing level of safeguards in Member States and with due respect for their legal traditions".

The assessment of the levels of provisions of procedural rights at the time afforded to suspected persons in criminal proceedings throughout the EU, became subject of a study carried out by Taru Spronken and Marelle Attinger. The Final Report in this study analysing the data gathered by the European Commission through a questionnaire sent to the Ministries of Justice and Home Affairs in the Member States, was delivered on 12 December 2005.⁹

The 2004 Proposal did not aim to create new rights or to monitor compliance with those rights that already exist under the ECHR or other international or European instruments, but rather aimed at ensuring a reasonable level of protection for suspects and defendants in criminal proceedings (such as the introduction of a letter of rights) in order to comply with the principle of mutual recognition. Nevertheless no political agreement has been reached on

⁶ See G. Vernimmen-Van Tiggelen and Laura Surano, *Analysis of the future of mutual recognition in criminal matters in the European Union*, 20 November 2008.

⁷ Green Paper from the Commission 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union', Brussels, 19 February 2003, COM (2003) 75 final.

⁸ Proposal for a 'Council Framework Decision on certain Procedural rights in Criminal Proceedings throughout the European Union', Brussels, 28 April 2004, COM (2004) 328 final, 2004/0113 (CNS).

⁹ T.N.B.M. Spronken and M. Attinger, *Procedural Rights in criminal proceedings: Existing Level of Safeguards in the European Union*, funded and published by the European Commission, 12 December 2005 <http://arno.unimaas.nl/show.cgi?fid=3891>.

the matter, *inter alia* because of the argument of some Member States that the ECHR adequately protects the rights of suspects and accused persons in the EU.

In light of the provisions in the Lisbon Treaty and taking into account the expressed disappointment of Member States towards the Commission, a follow up research to the 2005 Study has been carried out to obtain up-to-date information on the level of provision of procedural rights in the Member States that can provide a lead for a possible new Commission legal initiative on the matter. The research can also provide inspiration for the current and future legislative work on several procedural rights, as envisaged in the Roadmap on Procedural Rights presented by the Swedish Presidency on 1 July 2009 (11457/09, DROIPEN 53, COPEN 120), in particular on the right to interpretation and translation as addressed in the proposed Framework Decision on the matter (see COM (2009) 338 final).

1.2 Methodology and structure

The aim of the research project is to offer an up-to-date overview of the *status quo* of 4 fundamental procedural rights in criminal proceedings in the EU Member States:

- The right to information,
- The right to legal advice,
- The right to legal assistance free of charge,
- The right to translation and interpretation of documents

First, this report offers an analysis of these procedural rights which the European Convention on Human Rights provides for, as dealt with in recent case law of the European Court of Human Rights.

The underlying reason for this separate analysis is to give an overview of the minimum standards that should be respected in every single EU Member State today and to provide the normative framework to analyse the outcome of the data that has been gathered.

Subsequently, the following part of this report will paint a picture of the extent to which these procedural rights are guaranteed in the formal legislation of each EU Member State. This overview was obtained through an extensive questionnaire¹⁰ which was sent out to all 27 EU Member States. The specific aim of the questionnaire was to obtain up-to-date information on the same subjects as covered by the previous research carried out by Spronken and Attinger and to gain insight in the level of legal protection offered to suspects and accused in the EU Member States. Furthermore, the questionnaire included questions on

¹⁰ See annex 1.

how the examined procedural rights are dealt with in the Member States within procedures concerning the European Arrest Warrant (EAW) and other mutual recognition instruments. Therefore, the questionnaire was divided into the following chapters:

Chapter 1: The right to legal advice

Chapter 2: The right to legal assistance (partially) free of charge

Chapter 3: The right to translation of documents and the right to interpretation

Chapter 4: Other fundamental guarantees and the right to be informed on them

Chapter 5: European Arrest Warrant and other mutual recognition instruments

In the analysis of the results of the questionnaire, readers will find that “the right to information” was dealt with in the questionnaire as an overarching horizontal issue and not as a separate right, as is the case for the analysis of the ECtHR-case law. The right to information has several dimensions. First of all, it contains the right of anyone charged with a criminal offence to be informed on the nature and cause of the accusations against him and to have access to the evidence on which these accusations are based (the right to information as guaranteed by Art. 6 ECHR). Secondly, the right to information in this research also comprises the right to be informed on fundamental procedural rights. This right to be informed on procedural rights in itself is not covered by the ECHR, but is highly relevant for procedural rights that are mentioned in the ECHR to be practical and effective. Chapter 4 of the questionnaire covers the right to be informed on the charge, on the right to have access to the file, on the right to remain silent and on the right to call witnesses. The right to information on other procedural rights (the right to legal advice, the right to legal assistance (partially) free of charge and the right to translation and interpretation) was dealt with separately in chapter 1, 2, and 3 of the questionnaire.

The questionnaire was sent out to representatives of the Ministries of Justice of the EU Member States in April 2009. Each Member State has named one person responsible for answering the questionnaire.¹¹ Responses were received between April and July 2009 from all Member States except for Malta. Therefore, this report covers information on 26 Member States and no information on Malta could be incorporated.

The replies to the questionnaire are based on formal legislation. However, the respondents were asked to indicate if – to their knowledge – a certain legal provision is not applied in practice or if certain actions covered by this questionnaire are carried out in practice but do not have a legal basis.

¹¹ A list of the relevant contact persons can be found in Section 5 of the report.

The replies to the questionnaire could be filled in on-line. The questions were designed as much as possible as “closed questions” with limited options for answering them. Tick boxes were used which sometimes contained alternative answers (indicated by the words ‘choose one of the following answers’) whereas sometimes more than one answer was possible (indicated by the words ‘check any that apply’). Where relevant, the respondents were asked to refer to the relevant legal basis (statute, secondary legislation et cetera) and provide a translation into English of the text of the legal provision. Also, the respondents were asked to clarify their answers where relevant (indicated by the words ‘please specify’).

The conclusions drawn up in this report are based on the answers as provided by the representatives of the Ministries of Justice of the Member States. It is important to note that the project team has not carried out any research on the accuracy of these answers. However, when processing the replies to the questionnaire, the project team noticed that in some instances the answers provided were not consistent with the contents of the – according to the respondents – relevant legal provisions. Furthermore, sometimes specifications of answers clarified that the question was misinterpreted or misunderstood. Where relevant such discrepancies have been indicated in the analysis of the answers.

The text of the complete questionnaire and the User Guide (providing for more detailed information on how to use the online questionnaire) are attached to this report under Annex 1. An overview of all diagrams presenting the results of the answers to the questionnaire is attached under Annex 2. The complete answers to the questionnaire are presented in Annex 3 that will be made available on line: <http://arno.unimaas.nl/show.cgi?fid=16315>

2 Four Fundamental Procedural Rights in Criminal Proceedings throughout the European Union

This chapter provides a comprehensive overview of ECtHR case law on the 4 fundamental rights that are the subject of this study.¹²

2.1 Right to information

2.1.1 *Situations giving rise to the right to information*

The right to information is considered to be a crucial aspect of the overall right to defend oneself. At the level of the ECHR both arrested and not arrested persons are entitled to receive information on the nature and cause of the accusation against them.¹³ Additionally, in case of an arrest, the reasons for his arrest become subject to the right to information.¹⁴

2.1.2 *Timing*

Both Art. 5, 3 and 6, 3, a) ECHR require information to be delivered promptly. No further specification is made. Similarly, the Proposed Framework Decision referred in its Art. 14.1 to an immediate right.

2.1.3 *Means*

The ECHR does not give any indication as to the means to be used to provide the information. The ECHR prefers written to oral information and thus has suggested in its 2003 Green Paper that Member States should be required to inform suspects and defendants by means of a 'Letter of Rights'¹⁵. Subsequently a similar provision is found in the 2004 proposal.

2.1.4 *Content*

- *Accusations and charges*

Even though both Art. 5 and 6 ECHR are fairly specific in the information they require, they are limited to factual information of the case, being reasons for the arrest and the nature and

¹² This chapter is a revision and update of the first chapter of the study performed by T.N.B.M. Spronken and M. Attinger, *Procedural Rights in criminal proceedings: Existing Level of Safeguards in the European Union*, funded and published by the European Commission, 12 December 2005 <<http://arno.unimaas.nl/show.cgi?fid=3891>>.

¹³ Art. 5, 3 and Art. 6, 3, a) ECHR.

¹⁴ Art. 5, 3 ECHR.

¹⁵ Green Paper, section 8.1.

cause of the accusation and the respective legal bases¹⁶. Information should be provided in a language the defendant understands. The amount of information available for the suspect or accused is strongly dependant on the nature and complexity of the case.

- *Procedural rights*

Regrettably, there is no special provision in the ECHR that the suspect should be notified immediately of the other defence rights enlisted in the Convention (e.g. the right to consult a lawyer, to examine or have examined witnesses, the right to interpretation and translation). According to the EC however, it is important for both the investigating authorities and the persons being investigated to be fully aware of what rights exist. A Letter of rights in a language the suspect understands, does not create new rights but is an efficient way of informing suspects of their rights, which, according to the case law of the ECtHR, are not meant to be only theoretical but also to be effective in practice. Therefore Art. 14.3 of the Proposed Framework Decision required all Member States to “ensure that police stations keep the text of the written notification in all the official Community languages so as to be able to offer an arrested person a copy in a language he understands.” From recent case law of the ECtHR can be derived that the state has a duty to take all reasonable steps to make a suspect fully aware of his rights of defence and that domestic authorities have to ensure actively that a suspect understands these rights.¹⁷

- *Information on the investigation*

Art. 6, 3, b) stipulates that everyone charged with a criminal offence is entitled to have adequate time and facilities for the preparation of his defence. These rights entail the right to have access to all elements that are useful to prepare the defence¹⁸, including information *à décharge* (exculpatory), found by the prosecuting party¹⁹. Nevertheless, the European Court has accepted the *Public Interest Immunity* for certain elements: the right to full disclosure was not absolute and could, in pursuit of a legitimate aim such as the protection of national security or of vulnerable witnesses or sources of information, be subject to limitations.²⁰ Any such restriction on the rights of the defence should, however, be strictly proportionate and counterbalanced by procedural safeguards adequate to compensate for the handicap

¹⁶ ECtHR 18 March 2008, *Ladent*, (no. 11036/03), § 66; ECtHR 19 December 1960, *Ofner* (no. 524/59), § 5.

¹⁷ ECtHR 11 December 2008, *Panovits* (no. 4268/04), § 68 and § 72; ECtHR 27 March 2007, *Talat Tunç* (no. 32432/96), § 61; ECtHR 10 August 2006, *Padalov* (no. 54784/00), § 52-54.

¹⁸ ECtHR, 14 December 1981, *Jespers* (no. 8403/78).

¹⁹ ECtHR, 16 December 1992, *Edwards* (no. 13071/87), § 35-38.

²⁰ ECtHR, 16 February 2000, *Jasper* (no. 27052/95) § 43.

imposed on the defence. The need for disclosure or non disclosure should at all times be under assessment by the trial judge.²¹

2.2 Right to legal advice

2.2.1 *Seek legal advice or defend oneself*

According to the European Commission, the right to legal advice is a second key issue in procedural rights for suspects. A suspect who is represented by a lawyer is in a far better position with regards to the enforcement of all his other rights, partly because he is better informed of those rights and partly because a lawyer will assist him in ensuring that his rights are respected.²² The right to legal assistance is covered by other European and international treaties and charters as well; for instance the ICCPR²³, the Universal Declaration of Human Rights²⁴, the Charter on Fundamental Rights in the European Union²⁵, the American Convention on Human Rights²⁶, the African Charter on Human Rights and Peoples Rights²⁷ and the 1990 UN-resolution on Basic Principles on the Role of Lawyers.²⁸

In the explanatory note on the 2004 proposal, criminal proceedings were defined as ‘all proceedings taking place within the European Union aiming to establish the guilt or innocence of a person suspected of having committed a criminal offence or to decide on the outcome following a guilty plea in respect of a criminal charge’.²⁹ Legal advice before

²¹ ECtHR, 16 February 2000, *Rowe and Davis* (no. 28901/95), § 58.

²² Green Paper, section 4.1.

²³ Art. 14 (§ 3, b and d) ICCPR which covers almost the same as Art. 6 ECHR, adding the right to be informed of his right to legal assistance.

²⁴ In Art. 11 of the Universal Declaration on Human Rights it is determined that everyone being accused of having committed a crime, has the right to have all the guarantees necessary for his defence at his disposal.

²⁵ Art. 47 CFREU (Right to an effective remedy and to a fair trial).

²⁶ Art. 8 (§ 2, c – e) of the American Convention on Human Rights covers the same guarantees as Art. 6 ECHR, but adds the right ‘to communicate freely and privately with his counsel’.

²⁷ The African Charter on Human Rights and Peoples Rights also guarantees in Art. 7 (§ 1, c) the right to legal advice, including the right to be advised by a lawyer of his own choice.

²⁸ In this respect the UN-resolution on ‘Basic Principles on the Role of Lawyers’ - adopted by the Eight Crime Congress, Havana, 7 September 1990, ratified by Resolution 45/121 of the General Assembly of the UN dated 14 December 1990 - is also of great importance. The ground rules of the rights and duties of lawyers are prescribed in this resolution, emphasising the obligation of the government to guarantee the independence of the legal profession. Freedom of speech and association and assembly of lawyers should be respected and governments have to recognise that the communication between lawyers and clients is confidential. The government also has to guarantee that lawyers have access to the file and information at the earliest possible stage in the proceedings.

²⁹ The 2004 proposal, section 32.

answering any questions in relation to the charge should protect the suspect against making statements without understanding the legal implications that he (or she) subsequently regrets.³⁰

The right to legal advice/assistance is covered by Art. 6 (§ 3, b and c) ECHR. Art. 6 (§ 3 b) stipulates the right of every suspect to have the necessary time and facilities at his disposal to prepare his defence properly. The duration of this “necessary time” is not specified as it is strongly dependant on the complexity of each individual case. However, assigning a new duty lawyer only a few hours before the start of the trial clearly violates the right to have the necessary time to prepare a defence.³¹ According to Art. 6, § 3, c, the suspect has the right to choose either to defend himself (however he cannot be coerced into waiving his right to counsel)³², to be assisted by a lawyer of his own choosing (therefore the denial of legal assistance constitutes a violation³³, as does the failure to allow confidential communication³⁴), or to have a lawyer assigned to him in case he does not have the means to pay for a lawyer himself.³⁵ Art. 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial.³⁶

The right to seek legal representation does not constitute a waiver of the right to personal participation during the trial.

The guarantees laid down in Art. 6 (§ 3) ECHR are not an end in themselves, but must be interpreted in the light of their function in the overall context of the proceedings.³⁷

³⁰ The 2004 proposal, section 55, see also ECtHR, Grand Chamber, 27 November 2008, *Salduz* (no. 36391/02), § 54.

³¹ ECtHR 7 October 2008, *Bogumil*, (no. 35228/03), § 48; ECtHR 9 June 1998, *Twalib*, Reports, 1998.

³² ECtHR 12 June 2008, *Yaremenko*, (no. 32092/02), § 81.

³³ ECtHR 22 July 2008, *Panasenko*, (no. 10418/03), § 54; ECtHR 26 June 2008, *Shulepov* (no. 15435/03), § 39.

³⁴ ECtHR 27 November 2007, *Zagaria*, (no. 58295/00), § 36.

³⁵ ECtHR 11 November 2008, *Timergaliyev*, (no. 40631/02), § 59; ECtHR 10 August 2006, *Padalov* (no. 54784/00), § 53-54.

³⁶ ECtHR 27 April 2006, *Sannino* (no. 30961/03), § 48.

³⁷ ECtHR 12 July 1984, *Can* (B 79), § 48. “The court sees it as its task to ascertain whether the proceedings considered as a whole were fair”, which is standard case law of the ECtHR, see for example ECtHR 20 November 1989, *Kostovski*, A 166, § 39 and ECtHR 16 December 1992, *Edwards* (A 247-B), § 34.

2.2.2 *Obligation to provide legal assistance*

Notwithstanding the fact that the suspect is entitled to defend himself, obligatory legal representation can be prescribed under certain circumstances, for example when an appeal is lodged.³⁸ Other circumstances, which are not mentioned in ECtHR case law in relation to obligatory legal advice, were cited in Art. 3 of the 2004 proposal. The obligation to provide legal advice when the suspect is the subject of a European Arrest Warrant, extradition request or other surrender proceedings is an extension of existing provisions.

2.2.3 *Effective legal advice*

One of the basic obligations of a lawyer is to assist his client, not only in the preparation of the trial itself, but also in the control of the legality of any measures taken in the course of the investigation proceedings.³⁹ Additionally, this legal assistance has to be effective and the State is under the obligation to ensure that the lawyer has the information necessary to conduct a proper defence.⁴⁰ If legal representation is ineffective, the State is obliged to provide the suspect with another lawyer.⁴¹

Yet the ECtHR has clearly held that the lawyer's conduct is essentially an affair between the lawyer and his client. This is an important recognition by the ECtHR of the independence of the lawyer.⁴² This independence is threatened when the State is held responsible for every lawyer's shortcomings. The suspect should not be burdened with the risk of ineffective legal representation. Therefore the ECtHR has held that 'States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention'.⁴³ The suspect does not have to prove that he has been prejudiced due to lack of effective legal assistance⁴⁴, nor is it necessary that damages have arisen.⁴⁵

³⁸ ECtHR 24 November 1986, *Gillow* (A 109); ECtHR 25 September 1992, *Croissant* (A 237-B); ECtHR 14 January 2003, *Lagerblom* (no. 26891/95).

³⁹ ECtHR 12 July 1984, *Can* (B 79); ECtHR 4 March 2003, *Öcalan*, (no. 63486/00).

⁴⁰ ECtHR 9 April 1984, *Goddi* (A 76); ECtHR 4 March 2003, *Öcalan*, (no. 63486/00).

⁴¹ ECtHR 13 May 1980, *Artico* (A 37).

⁴² ECtHR 24 November 1993, *Imbrioscia*, (A 275), § 41: "However that may be, the applicant did not at the outset have the necessary legal support, but 'a state cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal purposes'. (...) Owing to the legal professions' independence, the conduct of the defence is essentially a matter between the defendant and his representative; under Art. 6 (§ 3c) the contracting States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention".

⁴³ ECtHR 24 November 1993, *Imbrioscia* (A 275), § 41, ECtHR 10 October 2002, *Czekalla*, Recueil/Reports 2002, § 65; ECtHR 7 October 2008, *Bogumil*, (no. 35228/03).

⁴⁴ ECtHR 13 May 1980, *Artico* (A 37).

⁴⁵ ECtHR 19 February 1991, *Alimena* (A 195-D).

The suspect cannot be expected to assess the effectiveness of his legal representation himself; hence the need for Member States to introduce a monitoring system.⁴⁶ This last provision is not stipulated in the ECHR, although the right to effective legal assistance can be deduced from ECtHR case law.

2.2.4 *Contact and Consultation*

The right to legal representation – and thus to contact a legal advisor – arises immediately upon arrest, although a reasonable time is allowed for the lawyer to arrive.⁴⁷ With regard to the moment the right arises, the proposed Framework Decision had stipulated in its Art. 2 that ‘a suspected person had the right to legal advice as soon as possible and throughout the criminal proceedings if he wishes to receive it’.

No specification is made as to the circumstances in which consultation should be possible. The latter is not included *expressis verbis* in ECHR, but is considered to be a part of the right in Art. 6.⁴⁸ The ECtHR has elaborated on the consultation circumstances in its case law. It has ruled that fair trial was compromised when the consultation could only take place in the presence of a prison guard⁴⁹, in the presence of police officers⁵⁰ or if a suspect can only communicate with his lawyer separated by a glass partition.⁵¹ Nevertheless, certain security measures could be allowed if proven truly necessary.⁵²

2.2.5 *Legal advice during police interrogation*

The physical presence of a lawyer can provide the necessary counterbalance against pressure used by the police during interviews.⁵³ When the suspect has to make decisions during police

⁴⁶ Proposed FD, section 59.

⁴⁷ ECtHR 8 February 1996, *John Murray* (Reports 1996-I).

⁴⁸ Commission, 12 June 1984, *Can v Austria* (no. 9300/82).

⁴⁹ ECtHR 29 November 1991, *S. v Switzerland*, (no. 13965/88).

⁵⁰ ECtHR 13 January 2009, *Rybacki* (no. 52479/99, § 53-62).

⁵¹ ECtHR 19 December 2006, *Oferta Plus SRL* (no. 14385/04), § 145-156; ECtHR 13 March 2007, *Castravet*, (no. 23393/05), § 59-60.

⁵² ECtHR 31 January 2002, *Lanz* (no. 24430/94).

⁵³ ECtHR 6 June 2000, *Magee* (no. 28135/95) and ECtHR 2 May 2000, *Codron* (no. 35718/97): “The fact that an accused person who is questioned under caution is assured access to legal advice, and in the applicants’ case the physical presence of a solicitor during police interview must be considered a particularly important safeguard for dispelling any compulsion to speak which may be inherent in the terms of the caution. For the court, particular caution is required when a domestic court seeks to attach weight to the fact that a person who is arrested in connection with a criminal offence and who has not been given access to a lawyer does not provide detailed responses when confronted with questions the answers to which may be incriminating.” (§ 60).

interrogations that may be decisive for the further course of the proceedings, he has the right to consult a lawyer prior to these interrogations.⁵⁴

Nevertheless, for years the ECtHR held that the right to have a lawyer present during police interrogation could in general not be derived from Art. 6 (§ 3) ECHR.⁵⁵ In contradiction to that initial view of the ECtHR, both the Yugoslavia Tribunal⁵⁶ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁵⁷ acknowledged that the right to have a lawyer present during police interrogation is one of the fundamental safeguards against ill-treatment of detained persons. Subsequently this consideration was acknowledged in Art. 2 (§ 2) of the 2004 proposal.

However, in 2 recent judgments the ECtHR has underlined the importance of the investigation stage for the preparation of the criminal proceedings, and referred to the recommendations of the CPT. “The Court finds that in order for the right to a fair trial to remain sufficiently ‘practical and effective’ Art. 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.” The ECtHR further indicates that even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction may not unduly prejudice the rights of the accused. As a consequence the ECtHR considers that the lack of legal assistance during a suspect’s interrogation would constitute a restriction of his defence rights and that these rights will in principle be irretrievably prejudiced when incriminating statements, made during police interrogation without access to a lawyer, are used for a conviction.⁵⁸

This new interpretation of Art. 6 § 3 (c), also referred to as the ‘Salduz doctrine’, has been confirmed in several judgments. In this (post-Salduz) case law the ECtHR has convicted the defending States (often Turkey) by merely referring to the Salduz principle and adding that

⁵⁴ ECtHR 6 June 2000, *Averill* (no. 36408/97).

⁵⁵ In *Dougan* (ECtHR 14 December 1999, no. 44738/98) the ECtHR held: “Before the Court of Appeal they argued for the first time that the statements made by the applicant to the police should have been declared inadmissible on account of the absence of a solicitor during interview. However the merits of that argument must be tested against the circumstances of the case. Quite apart from the consideration that this line of defence should have been used at first instance, the Court considers that an applicant cannot rely on Art. 6 to claim the right to have a solicitor physically present during interview.” See also ECtHR 16 October 2001, *Brennan* (no. 39846/98).

⁵⁶ Art. 18 (§ 3) Statute of the International Tribunal for the former Yugoslavia (ICTY). Decision on the Defence Motion to Exclude Evidence from ICTY in *Zdravko Mucic*, 2 September 1997, Case No. IT-96-21-T, Trial Chamber II.

⁵⁷ 2nd General report (CPT/Inf (92) 3), sections 36-38.

⁵⁸ ECtHR, Grand Chamber, 27 November 2008, *Salduz* (no. 36391/02), § 54-55 and ECtHR 11 December 2008, *Panovits* (no. 4268/04), § 66 and 70-73.

no exceptional circumstances were present that could justify an exception to this jurisprudence.⁵⁹ Moreover, in the case of *Shabelnik v. Ukraine* of 19 February 2009 the ECtHR has made a clear stance as regards the interpretation that should be given to its new jurisprudence: “...the applicant, having been warned about criminal liability for refusal to testify and at the same time having been informed about his right not to testify against himself, could have been confused, as he alleged, about his liability for refusal to testify, especially in the absence of legal advice during that interview”.⁶⁰

2.3 Right to legal assistance free of charge

The right to free legal aid is not unconditional. Art. 6 (§ 3c) ECRM stipulates that a suspect has the right to free legal aid on 2 conditions, namely if (1) he does not have sufficient means to pay for legal assistance and (2) when the interests of justice so require. The ECtHR holds that the suspect does not have to prove ‘beyond all doubt’ that he lacks the means to pay for his defence.⁶¹ The Proposed Framework Decision stipulated in Art. 5 that the costs of legal advice should be borne in whole or in part by the Member States if these costs would cause undue financial hardship to the suspected person or his dependents. The ECtHR indicates 3 factors which should be taken into account⁶²:

- The seriousness of the offence and the severity of the potential sentence,
- The complexity of the case, and
- The social and personal situation of the defendant.

The right to free legal aid exists whenever the deprivation of liberty is at stake⁶³, narrowing down the definition of ‘interests of justice’. Denying free legal aid for a period during which procedural acts, including questioning of the applicants and their medical examinations, are carried out is unacceptable according to the ECtHR.⁶⁴

Member States are free to operate the system that appears to them to be the most effective as long as free legal advice remains available where the interests of justice demand it.⁶⁵

⁵⁹ ECtHR, 10 March 2009, *Böke and Kandemir* (71912/01; 26968/02 and 36397/03); ECtHR, 3 March 2009, *Aba* (no. 7638/02 and 24146/04); ECtHR, 17 February 2009, *Aslan and Demir* (no. 38940/02 and 5197/03); ECtHR, 17 February 2009, *Oztürk* (no. 16500/04).

⁶⁰ ECtHR 19 February 2009, *Shabelnik* (application number 16404/03).

⁶¹ ECtHR 25 April 1983, *Pakelli* (A, 64, § 34).

⁶² ECtHR 24 May 1991, *Quaranta* (A, 205, § 35).

⁶³ ECtHR 10 June 1996, *Benham* (Reports 1996-III).

⁶⁴ ECtHR 20 June 2002, *Berlinski* (no. 27715/95 and 30209/96).

⁶⁵ The 2004 proposal, section 60-61.

2.4 Right to interpretation and translation

Suspects who do not speak or understand the language of the proceedings are clearly at a disadvantage. They are especially vulnerable, whatever their circumstances. Consequently, the right to interpretation and translation strikes the Commission as particularly important.⁶⁶

2.4.1 *The scope of the right to interpretation and translation*

- *All parts of criminal proceedings*

The right to free interpretation is derived from Art. 5,2 and 6,3,a-e ECHR⁶⁷ and established in ECtHR case law.⁶⁸ It extends to all parts of the criminal proceedings, which means that Member States have to provide an interpreter as soon as possible after it has come to light that the suspect is in need of an interpreter⁶⁹. The fact that no 'registered' interpreter was present during an initial police interrogation does not compromise the right to a fair trial and interpretation, as long as the interpretation was sufficient in quality and scope.⁷⁰ The ultimate duty to ensure fairness of the proceedings rests with the trial judge⁷¹, since he is the ultimate guardian of the fairness of the proceedings.⁷² The 2004 proposal referred to a competent authority being in charge of the decision regarding which documents need to be translated.

- *Translation of written documents*

The right to free translation of documents is not explicitly mentioned in Art. 6 ECHR. It is however established in ECtHR case law and incorporated by the EC in the 2004 proposal. The ECtHR held that only those documents, which the defendant 'needs to understand in order to have a fair trial', need to be translated:

The right, stated in paragraph 3 (e) of Art. 6 (Art. 6-3-e), to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and the

⁶⁶ Green Paper, section 5.2.

⁶⁷ This is also covered by Art. 14 § 3, a and f ICCPR and Art. 55 and 67 of the Rome Statute. The Rome Statute provides in Art. 55 the right to an interpreter and a translator for persons under investigation. Art. 67 of the Rome Statute provides for interpretation and translation at trial.

⁶⁸ ECtHR 28 November 1978, *Luedicke, Belkacem and Koç* (A 29).

⁶⁹ The 2004 proposal, section 63.

⁷⁰ ECtHR 19 December 1989, *Kamasinski* (A 168) § 76-77; See also the 2004 proposal, section 67.

⁷¹ Green Paper, section 5.2.1 (a).

⁷² ECtHR 24 September 2002, *Cuscani* (no. 32771/96); ECtHR 18 October 2006, *Hermi* (no. 18114/02), § 69-71.

pre-trial proceedings. Paragraph 3 (e) (Art. 6-3-e) signifies that a person "charged with a criminal offence" who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial (see the Luedicke, Belkacem and Koç judgment of 28 November 1978, Series A no. 29, p. 20, § 48).

However, paragraph 3 (e) (Art. 6-3-e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.⁷³

The rules on how much material is to be translated vary according to the Member State and the nature of the case. According to the EC, this variation is acceptable as long as the proceedings remain 'fair'.⁷⁴ The onus should be on the defence lawyer to ask for translations of any documents he considers necessary over and above what is provided by the prosecution.⁷⁵

An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on written notice of the factual and legal basis of the charges against him. A defendant not conversant with the court's language may in fact be put at a disadvantage if he is not also provided with a written translation of the indictment in a language he understands. The fact that only the titles of the crimes alleged are translated, but not the material substance upon which the charges were grounded, does not necessarily constitute a breach of the right to information and interpretation, when the facts are not so complicated and an oral explanation sufficiently informs the accused of 'the nature and cause of the accusation against him', for the purposes of paragraph 3 (a) of Art. 6 (Art. 6-3-a).⁷⁶

⁷³ ECtHR 19 December 1989, *Kamasinski* (A 168); see also ECtHR 14 January 2003, *Lagerblom* (no. 26891/95).

⁷⁴ Green Paper, section 5.2.1 (c).

⁷⁵ The 2004 proposal, section 66.

⁷⁶ ECtHR 19 December 1989, *Kamasinski* (A 168) § 81.

- *Hearing or speech impairment*

The rights granted in Art. 6 can also require hearing aid during trial, when a persons' hearing impairment significantly reduces the ability to follow the proceedings.⁷⁷

2.4.2 *Free interpretation and translation*

Both Art. 5, 2 and 6,3 ECHR combine to the importance of the information being provided in a language the accused understands, with a right to free translation and interpretation. Similarly, Art. 6 and 7 of the 2004 proposal entailed the right to free interpretation and the right to free translation of all relevant documents.⁷⁸

2.4.3 *Accuracy of the translation and interpretation*

The interpretation should enable the defendant's 'effective participation' in the proceedings. The proceedings should be recorded as a method of verifying that the interpretation was accurate. Recordings should not be used to challenge the proceedings from any other point of view.⁷⁹

Whilst Member States are conscious of these obligations in theory, these are not complied with in full in practice.⁸⁰ The difficulty however, is not one of acceptance on the part of the Member States, but one of levels and means of provision, and perhaps most importantly, costs of implementation.⁸¹

- *Registers of translators and interpreters*

In order to comply with the provision on accurate translation and interpretation, research⁸² has shown that a training system for translators is essential. The training system should focus on general practice of interpretation and translation and specific practice of the legal system. According to this study, Member States which currently do not have any training system should be required to develop one. As guaranteeing the quality of the training is of real importance, according to the study, standards should be governed and

⁷⁷ ECtHR 14 October 2008, *Timergaliyev*, (no. 40631/02), § 60.

⁷⁸ ECtHR 28 November 1978, *Luedicke* (no. 6210/73).

⁷⁹ The 2004 proposal, section 69 and 70.

⁸⁰ The 2004 proposal, section 36 - In some cases even a prisoner's cellmate is used as an interpreter. See also Reflection Forum on Multilingualism and Interpreter Training March 2009 <http://ec.europa.eu/commission_barosso/orban/docs/FinalL_Reflection_Forum_Report_en.pdf>.

⁸¹ Green Paper, section 5.2.

⁸² The research was carried out by the Lessius Hogeschool with the aid of a European Commission 'Grotius' subsidy (Grotius II project 2001/GRP/015); see also Heleen Keijzer-Lambooy, Willem Jan Gasille, (eds.) Instruments for Lifting Language Barriers in Intercultural Legal Proceedings EU project JAI/2003/AGIS/048, ITV Hogeschool voor Tolken en Vertalers 2005.

accredited by an independent body. This accreditation must be renewed on a regular basis, to maintain skills and continuous professional development. Furthermore, a register should be made, listing all accredited interpreters and translators, and should be easily accessible to courts and legal practitioners. In this regard, it is important to stress that interpretation and translation are 2 different professions which should be treated accordingly. Consequently 2 different registers are required.⁸³

- *Special attention for uncommon languages*

Another difficulty is the translation and interpretation of uncommon languages. It is for the Member States to make arrangements to cover such languages.⁸⁴ Member States must make funds available to make court interpretation and translation a more attractive career option to language graduates. Also, law graduates with excellent language skills should be encouraged to join the profession and be offered appropriate training.⁸⁵ Member States should also make an effort to recruit a sufficient number of translators and interpreters.⁸⁶

⁸³ C. Morgan, 'The Commission's draft proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union' in: Heleen Keijzer-Lambooy, Willem Jan Gasille, (eds.) *Instruments for Lifting Language Barriers in Intercultural Legal Proceedings*, p. 27 – 28. See also the Green Paper, section 5.2.2 (a).

⁸⁴ Green Paper, section 5.2.2 (c).

⁸⁵ Green Paper, section 5.2.2 (d).

⁸⁶ Green Paper, section 5.2.2 (e).

3 Analysis of the replies of Member States to the questionnaire

3.1 The Right to Legal Advice

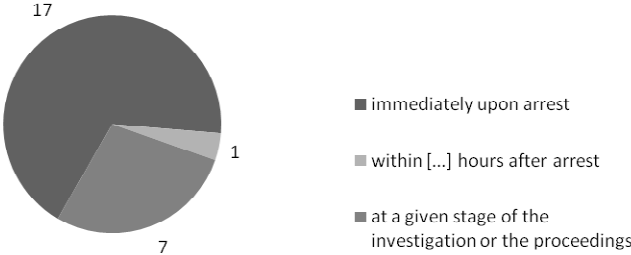
3.1.1 Contact

In all Member States – except for one (the Netherlands) – the right to contact a lawyer (or legal representative) after arrest is guaranteed. In the majority of these countries (17) the right to contact a lawyer can be effected immediately after arrest while in some countries (7) this is possible at a certain stage of investigation or the proceedings (diagram 2).

However, there may be limitations to the right to contact a lawyer. For example, in Austria – whenever it appears necessary to avoid any impairment of the proceedings or the evidence – the right may be (temporarily) limited. A serious reason to restrict the contact in this context means for example, if the suspect is (suspected of being) a member of a criminal organization and the other members are not yet arrested. An important guarantee that the suspect is able to benefit from legal assistance at an early stage of the proceedings is laid down in Hungarian legislation: when assistance of a defence lawyer is mandatory and the detained suspect has not retained a lawyer, he will be appointed one by the prosecutor, the court or the investigating authority no later than the first interrogation.

In one Member State (Belgium) the right to contact a lawyer can be effected within a certain lapse of time after arrest. In Belgium the arrested person has to be heard by the investigating judge within 24 hours after the arrest and the right to contact a lawyer starts after this hearing.

Diagram 2. When can the right to contact a lawyer (or legal representative) after the arrest be effected?



Immediately upon arrest: BG; CY; CZ; EE; FI; FR; EL; IT; LV; LT; PL; PT; RO; SK; SI; ES; UK

At a given stage of the investigation or the proceedings: AT; DE; DK; HU; IE; LU; SE **Within [...] hours after arrest:** BE

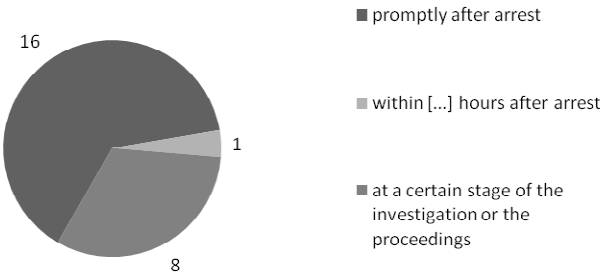
In all Member States where the right to contact a lawyer after arrest is guaranteed, there is a legal obligation to inform the suspect on this right. Also, it is guaranteed that this information is provided in a language the suspect understands. In the majority of countries, the obligation to inform the suspect arises promptly after arrest. In some Member States (8), this duty arises at a given stage of the investigation or the proceedings, such as before the first interrogation of the suspect. In Belgium the investigating judge, who hears the suspect within 24 hours after arrest, has to inform him at that time of his right to contact a lawyer (diagram 4).

With regard to the way in which the suspect should be informed on his right to contact a lawyer, it turns out that in the majority of countries (16) this information is only provided orally.⁸⁷ However, in some Member States this is done in writing (5) or both orally and in writing (4). Only in England and Wales the right to contact a lawyer is mentioned in a letter of rights (diagram 5)⁸⁸.

⁸⁷ Sometimes, as for example in Romania, the fact that this information was provided to the suspect should be written down in an official record that is added to the case file.

⁸⁸ Within the context of the questionnaire a letter of rights was understood to mean 'written information on the suspect's procedural rights in a standardised form'.

Diagram 4. When does the duty to inform the suspect of the right to contact a lawyer arise?

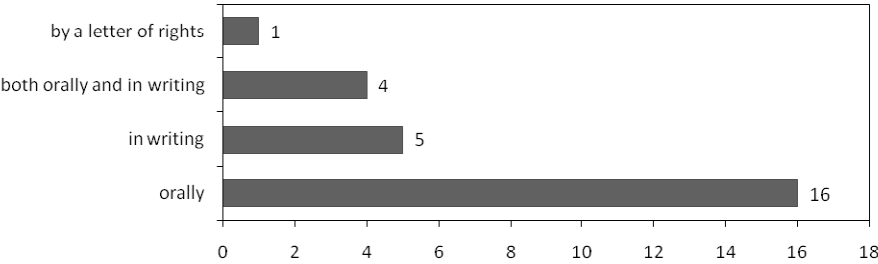


Promptly after arrest: AT; BG; EE; FI; FR; EL; HU; IT; LV; LT; PL; PT; SK; SI; ES; UK

At a certain stage of the investigation or the proceedings: CY; CZ; DK; DE; IE; LU; RO; SE

Within [...] hours after arrest: BE

Diagram 5. How should the suspect be informed of the right to contact a lawyer? (more than one answer possible)



By a letter of rights: UK **Both orally and in writing:** AT; CZ; LU; PL

In writing: BE; BG; IE; LV; PT

Orally: CY; EE; FI; FR; DE; EL; HU; LT; RO; SK; SI; ES; SE; UK; IT; DK

In the vast majority of Member States it is not possible to limit the right to contact a lawyer after arrest. In 4 countries such a possibility does exist either during a certain amount of time after arrest (varying from 24 hours until 48 hours after arrest) or until a given stage of the investigation or the proceedings (diagram 9). In Greece, the possibility to limit the right to contact a lawyer after arrest is not expressly provided for in the law but it may nevertheless happen in practice in order to better obtain and safeguard the gathering of evidence.

3.1.2 *Free choice*

In all 26 Member States the suspect has the right to a lawyer of his own choosing. This is often not the case if the lawyer is provided free of charge (see § 3.2.2)

3.1.3 *Consultation*

In all 26 Member States it is guaranteed that consultation with a lawyer (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means. In most cases, this guarantee is laid down in the Constitution and/or regulated by statute. In Greece, although consultation between the suspect and his lawyer may not be monitored by the authorities, this is not expressly laid down in the law.⁸⁹

Furthermore, in the vast majority of Member States (22) it is guaranteed that consultation (in person or by telephone) is possible before questioning by the police. In 4 countries this possibility is not guaranteed (diagram 12).⁹⁰

⁸⁹ The respondent of the Greek Ministry of Justice did not mention whether this practice is specified somewhere.

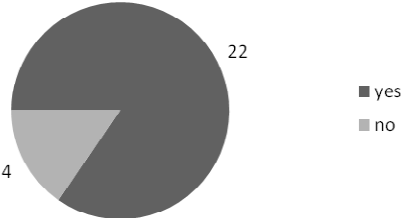
⁹⁰ From additional information provided by one of these countries – the Netherlands – it follows that as a result of recent Strasbourg case law (Salduz and Panovits case, see § 2.2.5) the Dutch code of criminal procedure will be amended and the right to contact a lawyer before being questioned by the police will be explicitly included as well as the obligation to inform the suspect of this right. Requested to give an interpretation of the consequences of the ECtHR judgments for the Dutch practice the Supreme Court of the Netherlands ruled on 30 June 2009 that a suspect has the right to consult a lawyer before the first police interrogation, but that only a juvenile suspect has the right to also have a lawyer present during police interrogation (HR 30 June 2009, no. 2411.08 J, NbSr 2009, 249).

Diagram 9. For which period of time is it possible to limit the right to contact a lawyer after arrest?



Up to [...] hours after arrest: FR; EL; UK
 Until a certain stage of the proceedings: AT

Diagram 12. Is it guaranteed that consultation (in person or by telephone) is possible before questioning by the police?

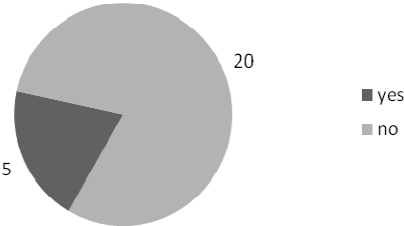


No guarantee that consultation is possible before questioning by the police: BE; EL; LV; NL
 Yes: AT; BG; CY; CZ; DK; EE; FI; FR; DE; HU; IE; IT; LT; LU; PL; PT; RO; SK; SI; ES; SE; E&W

It is possible for a defence lawyer to visit his client at the police station in all countries, except for one (Belgium). In the majority of Member States (20) the lawyer does not need permission to visit his client at the police station (diagram 14).

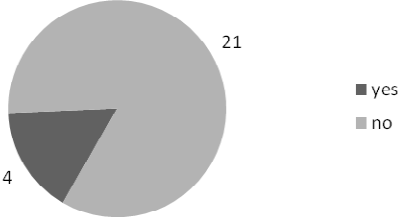
In the countries that do require permission, the person or authority who decides on this matter varies. For example in Poland, the lawyer needs the permission of the police officer on duty whereas in Sweden permission may be granted by the leader of the inquiry (investigation), the prosecutor or the court. Also, in most countries (21) these visits at the police station are not limited in time and/or frequency (diagram 15). In 4 countries there are limitations of such kind, as for example in France where the visit is limited in time (a maximum of thirty minutes) or United Kingdom where visits are granted at a time that is convenient to the overall investigation and also at a time practicable to the Duty Officer who has custody, charge and care of all detainees.

Diagram 14. Does the lawyer need permission to visit his client held at the police station?



Yes, permission required to visit client at police station: CY; IE; PL; SK; SE
No: AT; BE; BG; CZ; DK; EE; FI; FR; DE; EL; HU; IT; LV; LT; LU; NL; PT; RO; SI; ES; UK

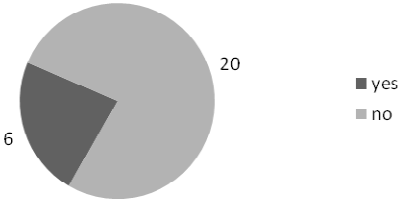
Diagram 15. Are lawyer-client visits at the police station limited in time and/or frequency?



Yes, visits limited in time and/or frequency: FR; IE; SK; UK
No: AT; BG; CY; CZ; DK; EE; FI; DE; EL; HU; IT; LV; LT; LU; NL; PL; PT; RO; SI; ES; SE

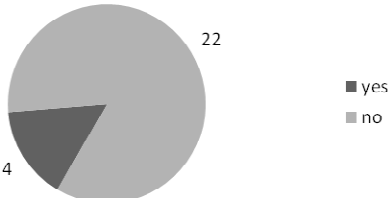
It is possible for a defence lawyer to visit the suspect in prison in all countries. In the majority (20) of Member States the lawyer does not need permission for such a visit (diagram 17). In a few countries (6), the lawyer does need permission from a certain authority. For example, in Austria the lawyer needs a formal authentication (during the preliminary proceeding from the public prosecutor and during the trial proceedings from the presiding judge) to visit the suspect remaining in prison. Also, in most countries (22) the lawyer's visits to the suspect in prison are not limited in time and/or frequency (diagram 18). It is important to note that the (4) respondents stating that there are limitations in time and/or frequency do not refer to any specific time and/or frequency limits provided for in national legislation but rather to general limitations connected with the opening hours of the detention facility. Probably such general limitations will apply in most Member States.

Diagram 17. Does the lawyer need permission to visit his client detained in prison?



Yes, permission required to visit client detained in prison: AT; CY; PL; SK; SE; UK
No: BE; BG; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PT; RO; SI; ES

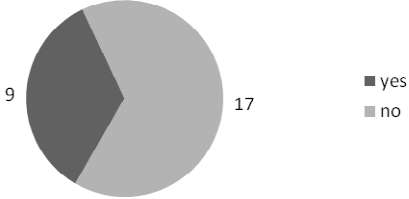
Diagram 18. Are lawyer-client visits in prison limited in time and/or frequency?



Yes, visits limited in time and/or frequency: AT; SK; SE; UK
No: BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PL; PT; RO; SI; ES

In 9 Member States there is a possibility to supervise the oral communication (including telephone conversations) between the suspect and his lawyer after arrest (diagram 19). In Sweden this possibility depends on the kind of defence lawyer: supervision of oral communication is only possible if the lawyer is not a public defence counsel. In most countries such supervision has to be ordered by the prosecutor or the (investigating) judge without any specific legal remedies provided to the defence in this respect. In the majority of Member States specific time limits are provided for but these vary widely: from a maximum of 6 days (the Netherlands) to a maximum of 8 months (Spain). Also, the grounds on which such supervision can be ordered vary significantly. In some countries supervision of oral communication is only possible when the lawyer himself is suspected of committing criminal offences while in other Member States there should be a danger of conspiracy or collusion. In a few countries the grounds provided for by law are rather vague: for example in Poland supervision of lawyer-client communication is possible 'where particularly justified', in Spain supervision can be ordered in cases of terrorism and in general by the investigating judge while the law does not specify in what kind of situations. None of the 9 Member States provide for a specific legal remedy for the defence against the supervision of oral communication. Supervision can include listening into telephone conversations, being present at visits from the lawyer, or only supervision of a visit out of hearing (see for more details the answers provided to questions 19a-19e of the Questionnaire).

Diagram 19. Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?



Yes, possibilities to supervise oral communication: AT; BE; NL; PL; RO; SK; ES; SE; UK

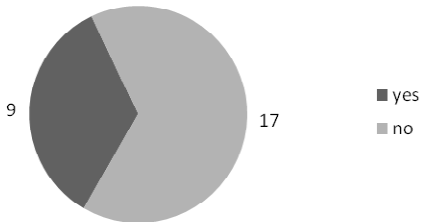
No: BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; PT; SI

Also, in 9 of the Member States there is a possibility to supervise the written communication between the suspect and his lawyer after arrest. It should be noted that these are not completely the same 9 countries as mentioned above (allowing supervision of oral communication) (diagram 20). In most countries this kind of supervision is not connected to a fixed time limit nor is a specific legal remedy for the defence provided for

3.1.4 Questioning

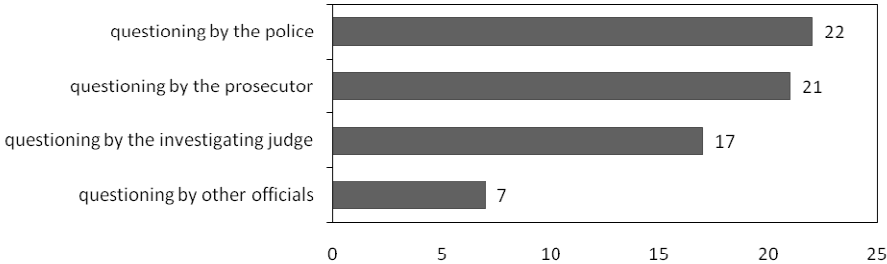
In the majority of Member States the lawyer has the right to be present when the suspect is being questioned (by the police or the prosecutor or the investigating judge or another official such as custom officers, special investigative services, military police, financial crime investigation services). However, in 5 Member States (Belgium, France, Ireland, Scotland and the Netherlands) the lawyer does not have the right to be present at interrogations by the police (diagram 22). With respect to the competences of the lawyer during questioning, it appears that in most countries the lawyer is allowed to make remarks, ask questions and to intervene.

Diagram 20. Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?



Yes, possibilities to supervise written communication: AT; CY; NL; PL; PT; RO; ES; SE; UK
No: BE; BG; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; SK; SI

Diagram 22. Does the right of the lawyer to be present throughout questioning cover...?



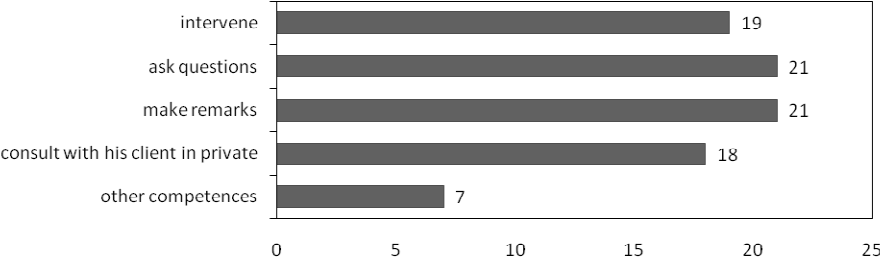
By the police: AT; BG; CY; CZ; DK; EE; FI; DE; EL; HU; IT; LV; LT; LU; PL; PT; RO; SK; SI; ES; SE; E&W
By the prosecutor: AT; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IT; LV; LT; PL; PT; RO; SK; SI; ES; SE
By the investigating judge: CY; CZ; EE; FR; ES; DE; EL; HU; IT; LV; LT; LU; NL; PL; PT; SK; SI
By other officials: AT; BG; CY; FR; LT; PL; SE

In 6 Member States the lawyer does not have the right to consult with his client in private during interrogation (diagram 23). The Slovak Republic takes a special position in this respect: it is the only country where the lawyer – who is allowed to participate in questioning by the police, the prosecutor and the investigating judge – does not have the right to intervene, ask questions, make remarks nor to consult with his client in private. In the code of criminal procedure of the Slovak Republic it is expressively stated that the suspect is not entitled to consult with his lawyer during questioning on how to answer the question posed.⁹¹

In nearly all countries allowing the lawyer to be present during (some kind of) questioning there is an obligation for the authorities to inform the suspect of this right. Only in the Netherlands this obligation to inform the suspect does not exist. Furthermore, in all countries (again, except for the Netherlands) there is an obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands.

⁹¹ According to the answers of the Slovak Republic the lawyer does have ‘other competences’ during questioning but these were not specified in the answers to the questionnaire.

Diagram 23. What are the competences of the lawyer during questioning?



Intervene: BG; CY; CZ; DK; EE; FR; DE; HU; IT; LV; LT; LU; NL; PL; PT; RO; SI; ES; E&W
Ask questions: AT; BG; CZ; DK; EE; FI; FR; DE; HU; IT; LV; LT; LU; NL; PL; PT; RO; SI; ES; SE; E&W
Make remarks: BG; CY; CZ; DK; EE; FR; DE; EL; HU; IT; LV; LT; LU; NL; PL; PT; RO; SI; ES; SE; E&W
Consult with client in private: AT; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IT; PL; PT; SI; ES; SE; E&W
Other competences: BG; CZ; FR; HU; LV; LT; SK

The moment at which the obligation to inform the suspect of his right to have a lawyer present during questioning arises, varies. In the majority of Member States (14) the suspect has to be informed of this promptly after arrest. In 9 countries this obligation arises at a given stage of the investigation or the proceedings (diagram 25). In most situations this means (at the latest) before the first interrogation. In a situation where the suspect is informed of his right to have a lawyer present for the first time at the beginning of his first interrogation, this right can obviously only be exercised effectively if he is offered the opportunity to contact a lawyer at that moment and if the interrogation will be postponed. However, only one of the respondents (Lithuania) indicated that the code of criminal procedure expressly states that the authorities are obliged to provide an opportunity for the suspect to exercise his right to defence. For all other countries, it is not clear whether there exists an obligation to give the suspect an opportunity to effectuate (within a reasonable time) his right to be questioned in the presence of his lawyer.

Also, the way in which the suspect should be informed of his right to have a lawyer present during questioning varies (diagram 26). Only in 5 Member States the suspect is informed of this right by means of a letter of rights. In most countries (19) the information is, *inter alia*, provided orally, and in 10 of these 19 countries this is the only way the suspect is informed. In 9 countries the suspect is (also) informed in a written manner. Latvia is the only Member State in which the suspect is only informed in writing.

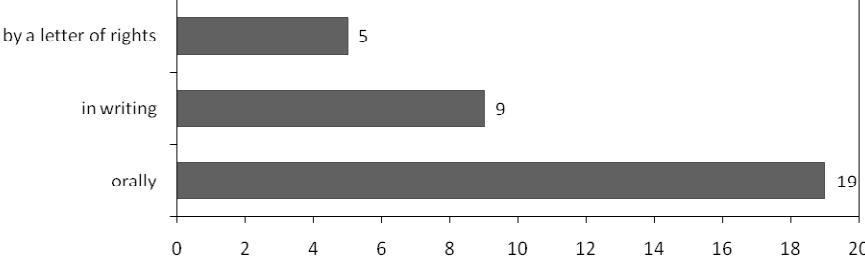
Diagram 25. When does the duty to inform the suspect of his right to have a lawyer present throughout questioning arise for the first time?



Promptly after arrest: BG; CY; EE; FI; EL; HU; IT; LV; LU; PT; SK; SI; ES; E&W

At a given stage of the investigation or the proceedings: AT; CZ; DK; FR; DE; LT; PL; RO; SE

Diagram 26. How should the suspect be informed of his right to have a lawyer present during questioning?



Letter of rights: AT; CZ; LU; PL; SE

In writing: BG; EE; FI; FR; HU; LV; LT; PT; RO

Orally: AT; BG; CY; EE; FI; FR; DE; DK; EL; HU; IT; LT; PT; RO; SK; SI; ES; SE; E&W

In all Member States except for 3 (Portugal, Spain and Italy) the confession made by a suspect in the absence of his lawyer may be used as evidence in court. In this respect, most respondents refer to the free evaluation of evidence by the trial judge as being one of the fundamental principles underlying their criminal justice system. However, in some countries there are limitations to the use of confessions made in the absence of a lawyer. For example in Slovenia, such a confession may only be used as evidence in court if the suspect has (expressly) waived his right to a lawyer. Such a waiver should be noted in the record of the investigation.

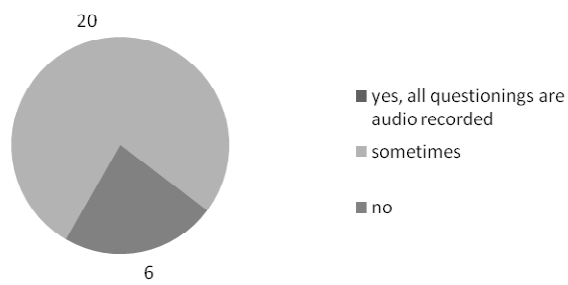
With respect to audio- and video recording of the questioning of the suspect it turns out that in the majority of Member States (20) interrogations are sometimes audio recorded. In 6 countries audio recording never occur and in none of the countries are all interrogations being audio recorded (diagram 29).⁹² In most countries the parties to the proceedings who have a right to inspect the case file will also have the right to inspect (a transcript of) the audio recording.

In only one Member State – Ireland – all interrogations are being video recorded. In the majority of the other countries (19) this happens sometimes and in 6 Member States video recording of interrogations never occur (diagram 32). When comparing the answers to the questions on audio and video recording it turns out that in 4 countries⁹³ both ways of recording are never carried out during questioning of suspects.

⁹² Except for England and Wales where all police interviews are in principle audio recorded. This is not the case in Scotland.

⁹³ CY; EL; IT; LU.

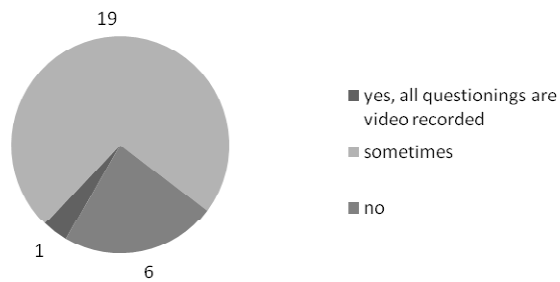
Diagram 29. Is the questioning of the suspect audio recorded?



Sometimes: AT; BE; BG; CZ; EE; FI; DE; DK; HU; LV; LT; NL; PL; PT; RO; SK; SI; ES; SE; UK

No audio recording: CY; FR; EL; IE; IT; LU

Diagram 32. Is the questioning of the suspect video recorded?



All questioning are video recorded: IE

Sometimes: AT; BE; BG; CZ; DK; EE; FI; FR; HU; LV; LT; NL; PL; PT; SK; SI; ES; SE; UK

No video recording: CY; DE; EL; IT; LU; RO

3.1.5 *Conclusions on the right to legal advice*

The right to contact a lawyer after arrest exists in most Member States and in most of these countries this right cannot be limited. However, it follows from the analysis of the results of the questionnaire that there is a great divergence as to the moment at which the right to contact a lawyer can be effected. For example, in a considerable number of countries this is not possible immediately after arrest but only at a given stage of the investigation or the proceedings.

Although the obligation to inform the suspect on his right to contact a lawyer exists in all Member States, the actual scope of this legal obligation varies widely. This divergence particularly applies to the moment at which the obligation arises and the manner in which the suspect should be informed. Striking fact is that in only one of the Member States (England and Wales) the right to contact a lawyer is mentioned in a letter of rights.

Visiting clients at police stations and in prison seems to be rather unproblematic throughout the EU: in most countries no permission is required and no limitations in time and/or frequency exist. Although all Member States indicate that it is guaranteed that consultation with a lawyer is out of hearing of third parties and/or without its contents being monitored by any technical means, a considerable number of countries also state that supervision of oral and/or written communication is possible. Striking fact is that there is a wide variety as to the time limits and grounds provided for these forms of supervision. The analysis shows that especially the conditions for supervision of written communication are rather vague, not connected to specific time limits nor are the applicable legal frameworks providing for any specific legal remedies.

With respect to the interrogation of the suspect, the research shows that making video- and/or audio recordings of the questioning is not common practice within the EU. An exception is England and Wales, where interviews with suspects at the police station are always tape recorded and exceptions are only made if it is not reasonably practicable to do so (failure of equipment) or where it is clear from the outset that no prosecution will ensue. In Scotland however this is not a common practice as in most countries where audio or video recording occurs sometimes. In a few countries such recordings are never made.

With regard to legal assistance before and during police interrogation in 4 Member States (Belgium, Greece, Latvia and the Netherlands) the right to consult a lawyer before questioning is not guaranteed. In 5 countries, namely Belgium, France, Ireland, Scotland and the Netherlands, there is no right for the lawyer to be present at interrogations carried out by the police. To conclude; in Greece and Latvia, there is a right for the lawyer to be present

during police interrogation but no right to prior consultation, while in France, Ireland and Scotland there is a right to consultation prior to the police interrogation but there is no right for the lawyer to be present during the police interrogation. In Belgium and the Netherlands⁹⁴ there is nor a right to prior consultation with a lawyer nor a right for a lawyer to be present during police interrogation.

In almost all countries where the lawyer is allowed to be present during police interrogation, authorities are obliged to inform the suspect of this right. Striking however, is the fact that there are considerable differences among Member States as to the moment at which the obligation to inform the suspect of this right arises and the way in which the information is provided to the suspect. More specifically, although in most countries the suspect should be informed at the latest before his first interrogation it is not clear whether there is an obligation for the authorities to postpone the interrogation when the suspect asks for the presence of his lawyer. If this is not guaranteed, effectively exercising the right to have a lawyer present at the first interrogation will entail serious difficulties. Only in a small number of countries the right to have a lawyer present during questioning is mentioned in a letter of rights. In a considerable number of countries there is no possibility for the defence to deliberate in private during questioning.

Finally, the study shows that the presence of a lawyer at the interrogation is not deemed indispensable: in only 3 Member States it is not allowed to use the confession of a suspect made in the absence of his lawyer as evidence in court.

⁹⁴ In the Netherlands this has changed as a result of the *Salduz* judgment of the ECtHR Grand Chamber, 27 November 2008, *Salduz* (no.36391/02). Requested to give an interpretation of the consequences of this judgment for the Dutch practice the Supreme Court of the Netherlands ruled on 30 June 2009 that a suspect has the right to consult a lawyer before the first police interrogation, but that only a juvenile suspect has the right to also have a lawyer present during police interrogation (HR 30 June 2009, no. 2411.08 J, NbSr 2009, 249).

3.2 The Right to Legal Assistance (partially) free of charge

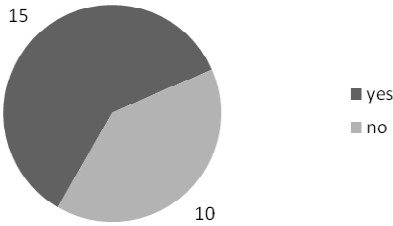
3.2.1 *Criteria*

In nearly all Member States – except for one (Germany) – the suspect has a right to legal assistance (partially) free of charge.

In the majority of these countries (15) there is a merits test to check whether professional legal aid is in the interest of justice given the particular circumstances of the case and/or the suspect.⁹⁵ Specifications of these merits tests vary but in many – especially Central and Eastern European countries – it mainly concerns situations of obligatory defence. In other countries ground for legal assistance (partially) free of charge may be found in the gravity of the case (for example in Ireland a defence lawyer should be appointed in case of a murder charge) or the fact that the suspect is detained (as is the case in the Netherlands). In ten Member States a merits test does not exist (diagram 36).

⁹⁵ Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

Diagram 36. Is there a merits test to check whether professional legal aid is in the interest of justice?

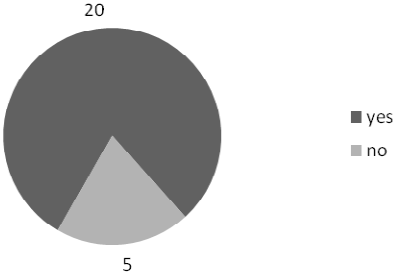


No merits test: BE; DK; FI; FR; IT; LV; LT; LU; PT; SI
Yes: AT; BG; CY; CZ; EE; EL; HU; IE; NL; PL; RO; SK; ES; SE; UK

The majority of Member States (20) providing for legal assistance (partially) free of charge apply a means test.⁹⁶ In 5 countries a means test does not exist (diagram 37). There is a considerable variation as to the content and meaning of the means test. In some countries it entails a certain annual or monthly income. In others, the means test is far less specific and based on rather vague legal criteria. For example in the Slovak Republic legal assistance (partially) free of charge is available for the accused 'who does not have sufficient means to cover the legal costs of defence'. Likewise, in Poland the suspect is eligible for legal aid if 'he can duly prove that he is unable to pay the defence costs without prejudice to his and his family's support and maintenance'. There are however no rules established in Poland on how the suspect should prove that he is unable to pay for legal assistance. Equally, no verifiable criteria are mentioned in the answers to the questionnaire on how requests for free legal aid are dealt with in Poland. In Ireland an applicant for legal aid must establish to the satisfaction of the court that his means are insufficient to enable him to pay for legal aid himself. This is a discretionary matter for each court and is currently not governed by any financial eligibility guidelines. In Finland, as a general principle, legal aid is granted in all criminal cases (except for simple criminal acts sanctioned with a fine). However, according to the Finnish respondent there exists a means test so it is not clear how this relates to the fact that – in principle – legal assistance free of charge is granted in all criminal cases.

⁹⁶ A means test is a mechanism providing for uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

Diagram 37. Is there a means test to determine if the suspect is eligible for legal aid?



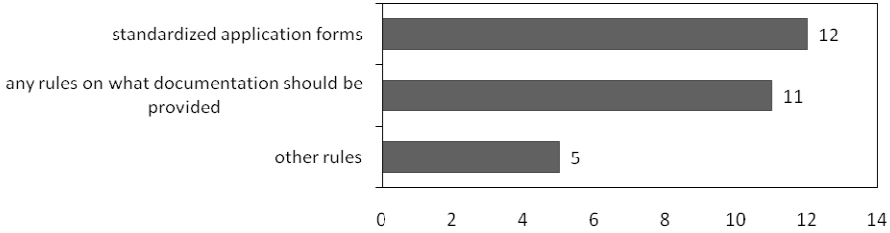
No means test: BG; DK; EE; LV; SE

Yes: AT; BE; CY; CZ; FI; FR; EL; HU; IE; IT; LT; LU; NL; PL; PT; RO; SK; SI; ES; UK

With regard to the existence of rules on how the suspect should prove that he is unable to pay for legal assistance, it should be noted that in more than half of the countries using a means test there are standardised application forms. This also means that in a considerable number of Member States (8) there is a means test without the existence of such standardised forms. In 11 countries there are rules on what documentation should be provided. In 5 countries there are (only or also) other rules than on what documentation should be provided (diagram 38). For example, in the Netherlands an income and property check is done through information available at the tax authorities.

With regard to the existence of other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge 5 respondents answered that such criteria do exist. For example, in Cyprus the gravity, difficulty or other circumstances of the case are relevant. However, it should be noted that when specifying these 'other criteria', most of the remaining respondents refer to the general criteria for mandatory defence.

Diagram 38. If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself? More specifically are there:



Standardized application forms: AT; BE; CY; FI; FR; EL; HU; LT; LU; NL; PT; SI

Any rules on what documentation should be provided: BE; CY; CZ; FI; HU; IT; LT; PT; RO; SK; ES

Other rules: AT; IE; NL; PL; UK

3.2.2 Procedure

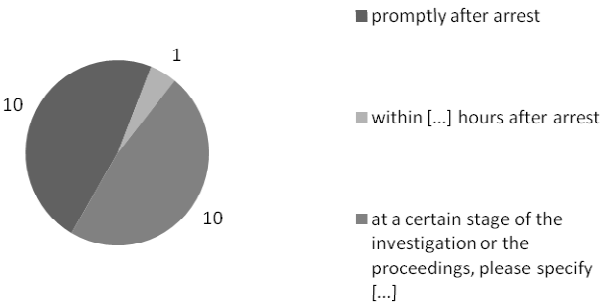
In 4 Member States there is no legal obligation to inform the suspect of his right to legal assistance (partially) free of charge.⁹⁷ In the 21 Member States where such a legal obligation does exist, the moment at which the duty to inform the suspect of this right arises, varies: in about half of the countries the suspect should be informed immediately after arrest while in the other half the obligation arises at a given stage of the investigation or the proceedings. It should be mentioned however, that some of the respondents belonging to the second category – such as Cyprus and Poland – specify the given stage of the investigation or the proceedings (inter alia) as ‘at the time of arrest’. So, it is fair to assume that they actually belong to the first category (countries where the obligation arises immediately after arrest). For the other countries belonging to the second category there is a considerable variation as to the contents of ‘a given stage of the investigation or the proceedings’. It varies from within 6 hours after arrest (the Netherlands) to the moment the suspect appears before the examining judge in view of the trial (Greece). Only in France, does the obligation to inform the suspect of his right to legal assistance (partially) free of charge arise within a certain lapse of time after arrest, more specifically, when the suspect appears before the investigating judge (diagram 41).

In only 4 of the 21 countries where a legal obligation to inform the suspect exists, this information is provided to the suspect by means of a letter of rights.⁹⁸ In the majority of countries the suspect is informed orally (in 7 countries both orally and in writing). In Latvia and the Netherlands the suspect is only informed of his right to legal assistance (partially) free of charge in writing (diagram 42).

⁹⁷ BE; DK; LU; SE.

⁹⁸ AT; CZ; PL; SE.

Diagram 41. When does the duty to inform the suspect of his right to legal assistance (partially) free of charge arise?

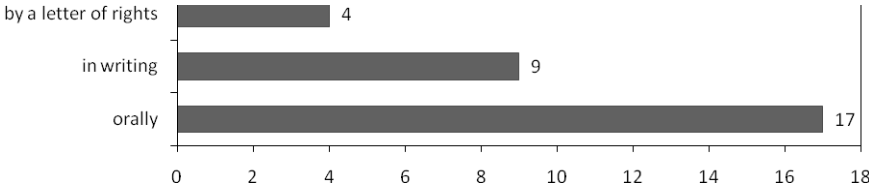


Promptly after arrest: BG; EE; FI; HU; IT; LV; PT; SK; ES; UK;

Within [...] hours after arrest: FR

At a given stage of the investigation or the proceedings: AT; CY; CZ; EL; IE; LT; NL; PL; RO; SE

Diagram 42. How should the suspect be informed of his right to legal assistance (partially) free of charge?



Letter of rights: AT; CZ; PL; SE

In writing: BG; EE; FI; FR; HU; LV; LT; NL; PT

Orally: AT; BG; CY; EE; FI; FR; EL; HU; IE; IT; LT; PT; RO; SK; ES; SE; UK

In the vast majority of the 21 Member States there is also an obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands. Only in the Netherlands and Italy such an obligation does not exist.

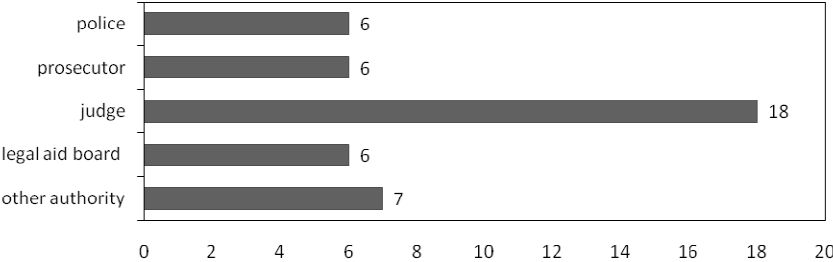
There is a substantial divergence between Member States with regard to who decides on the request for free legal assistance (police, prosecutor, judge, legal aid board and/or other authority, see diagram 44). In 15 Member States only one authority is authorised to decide on legal assistance (partially) free of charge. In 9 of these countries it is only the judge who decides on a request for legal aid.⁹⁹ In 2 Member States (Spain and Belgium) this decision is exclusively taken by a legal aid board. In the other 4 countries the decision is left to an 'other authority'.¹⁰⁰ In almost all of the remaining 10 countries where more than one authority has the power to decide on legal aid, one of these authorities is the judge. Only in the UK the judge has no power in this respect – the decision is taken by the Scottish legal aid board and the Legal Services Commission in England and Wales.¹⁰¹

⁹⁹ However, the number is actually ten since Poland specified the 'other authority' as 'the president of the court or a judge authorized by him': both authorities being judges.

¹⁰⁰ These 'other authorities' are: a State Legal Aid Office (Finland), the President of the Bar Association (Luxembourg), the head of Social Security Services (Portugal) and a Legal Aid Authority forming part of the district court (Slovenia).

¹⁰¹ However, this is different for Scotland where the judge does (also) have the power to decide on requests for free legal assistance.

Diagram 44. Who decides on the request for legal assistance (partially) free of charge?



Police: BG; EE; FR; LV; LT; RO

Prosecutor: BG; EE; HU; LV; LT; RO

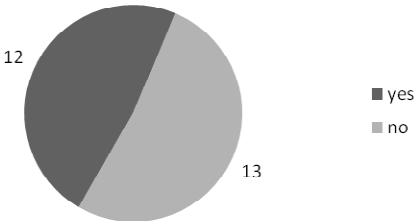
Judge: AT; BG; CY; CZ; DK; EE; FR; EL; HU; IE; IT; LV; LT; NL; PL; RO; SK; SE

Legal aid board: BE; FR; LT; NL; ES; UK

Other authority: BG; FI; LU; PL; PT; SI; UK

In about half of the 25 Member States offering suspects the possibility to apply for legal assistance (partially) free of charge there is a legal time limit for deciding on such requests. From the specifications of these legal time limits it is clear that some of them are rather vague: for example in the Czech Republic and Sweden the decision should be taken 'without delay'. More specific time limits vary widely from 48 hours (UK) to 6 weeks (the Netherlands). In a considerable number of countries (13) a legal time limit does not exist (diagram 45).

Diagram 45. Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?



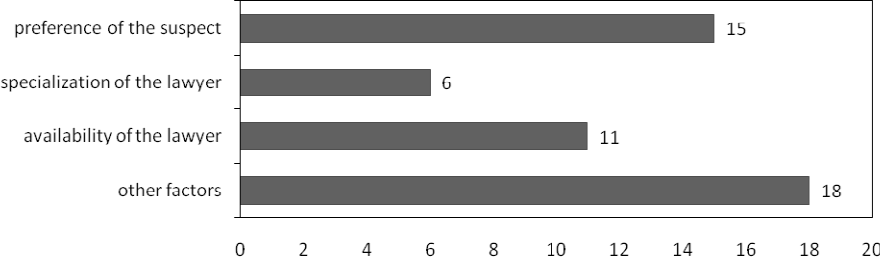
No legal time limit: AT; BG; CY; DK; EE; FI; EL; HU; IE; LV; LU; PL; RO

Yes: BE; CZ; FR; IT; LT; NL; PT; SK; SI; ES; SE; UK

In the majority of Member States (19) a legal remedy is available when the request for free legal assistance is denied. The contents of legal remedy vary from appeal according to criminal procedure law to administrative appeal. In Belgium the appeal should be filed with the labour court (tribunal de travail). In 6 Member States a legal remedy does not exist.

With regard to the factors that are taken into account when appointing a lawyer to provide legal assistance free of charge a small majority of the Member States (15) takes notice of the preference of the suspect. Only in 6 countries the specialisation of the lawyer is a relevant factor. The availability of the lawyer is taken into account in 11 countries (diagram 47). In 8 Member States only 'other factors' are considered when deciding on the appointment of a legal aid lawyer. In most cases, these 'other factors' concern the fact that the lawyer should be registered on a list of lawyers who declared to be willing to provide legal assistance free of charge.

Diagram 47. When a request for legal assistance (partially) free of charge is approved, what factors are taken into account to decide which lawyer should be appointed?



Preference of the suspect: BE; BG; CZ; DK; FI; FR; IT; LV; LT; LU; NL; PL; PT; SI; UK

Specialization of the lawyer: BE; BG; DK; LT; PL; RO

Availability of the lawyer: BE; BG; DK; EL; HU; LT; NL; PL; PT; RO; SI

Other factors: AT; BE; BG; CY; CZ; DK; EE; FI; FR; EL; IE; IT; LV; LT; SK; ES; SE; UK

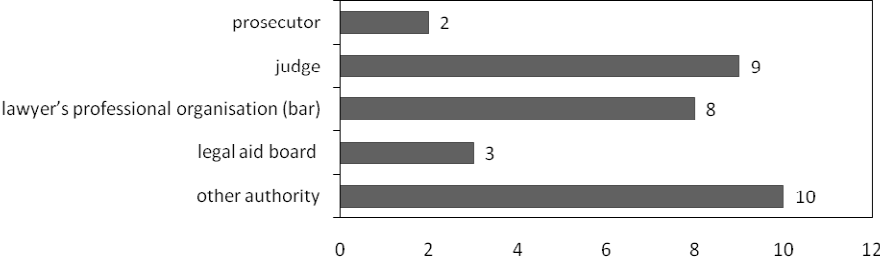
When a request is granted, the decision on which lawyer should be appointed is taken by different authorities throughout the EU (diagram 48). In 3 countries¹⁰² the judge is the sole authority to take such a decision whereas in 7 Member States the appointment of a specific lawyer is done only by the lawyer's professional organisation (bar). In 3 Member States¹⁰³ this decision can only be taken by the Legal Aid Board

Finally, 5 respondents declare that only an 'other authority' is empowered to decide which lawyer should be appointed. It should be mentioned however, that from the specifications provided by these respondents it turns out that in at least 3 cases the 'other authorities' are actually the judge (Poland) or the lawyer's professional organisation (Austria and Luxembourg) and therefore belong to the other categories mentioned before. Only in the UK the suspect himself is entitled to decide on which lawyer should be appointed, provided that the lawyer has a contract with the Legal Services Commission or the Scottish Legal Aid Board.

¹⁰² EL; IE; SE.

¹⁰³ BE; LT; NL.

Diagram 48. When a request for legal assistance (partially) free of charge is approved, who decides which lawyer should be appointed?



Prosecutor: EE; HU

Judge: CY; CZ; EE; FI; DK; EL; HU; IE; SE

Lawyer's professional organisation (bar): BG; EE; FR; LV; PT; RO; SK; ES

legal aid board: BE; LT; NL

other authority: AT; CY; CZ; FI; HU; IT; LU; PL; SI; UK

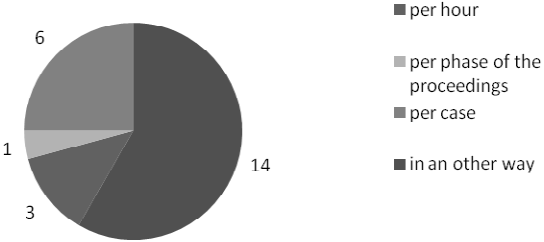
3.2.3 *Financial matters*

In almost all 25 Member States providing for legal assistance (partially) free of charge the costs of the defence lawyer are remunerated by the state. The only country where this is not the case is Hungary. Since this matter was not covered by the questionnaire, it is not clear who pays for the costs of legal assistance (partially) free of charge in Hungary.

The way in which remuneration by the state is provided, varies widely among the 24 Member States (diagram 50). In 6 countries the remuneration is provided per case. In 3 Member States the remuneration is awarded per hour and in only one country (Bulgaria) this happens per phase of the proceedings. In the remaining 14 Member States the remuneration is provided 'in another way'. From the specifications provided by the respondents it is clear that there are many different 'other ways' in which remuneration is awarded. For example, in Austria one lump sum is provided every year to the Bar by the Ministry of Justice as a compensation for providing legal assistance free of charge in civil and criminal matters. How this lump sum is used by the Bar and how the lawyers providing legal assistance free benefit of it is not explained by the Austrian respondent. While in most countries fixed fees are set by the government, in Estonia this is done by the Bar Association on a yearly basis. In Lithuania certain defence lawyers who provide legal assistance free of charge in criminal case on a regular basis (and who have entered into the relevant agreements with the service providing legal aid) are paid a regular monthly salary.¹⁰⁴

¹⁰⁴ Defence lawyers who do not provide this kind of assistance on a regular basis, are paid a fixed fee for each case depending on the difficulty of the case.

Diagram 50. How is remuneration by the state of legal assistance (partially) free of charge provided?



Per hour: FI; LU; RO

Per phase of het proceedings: BG

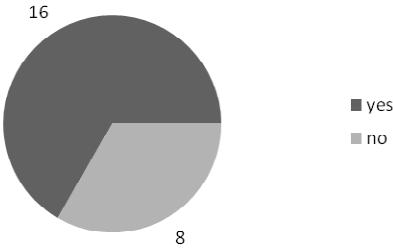
Per case: BE; FR; EL; PL; PT; SI

In another way: AT; CY; CZ; DK; EE; IE; IT; LV; LT; NL; SK; ES; SE; UK

In the majority of Member States remuneration for providing legal assistance free of charge is determined by minimum and/or maximum amount (diagram 51). The specifications of these minimum and/or maximum amounts are either not provided by the respondents, unclear or formulated in national currencies, which makes it difficult to compare this part of the information.

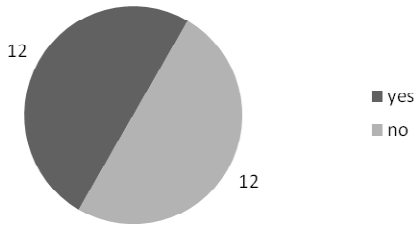
In half of the Member States providing for legal assistance (partially) free of charge, the suspect is obliged to pay a financial contribution (diagram 52). In a few countries, such as Austria, Estonia and Sweden, this is only possible in case of conviction and the financial situation of the convict is taken into account when deciding on the reimbursement of costs. In some other Member States (such as Belgium and the Slovak Republic) reimbursement is only possible when the suspect benefits from legal assistance partially free of charge (or 'for a reduced fee'). Spain takes a special position in this respect: according to Spanish 'free legal assistance law' the person who is entitled to free legal aid and who is sentenced to pay the costs of the trial, will only be obliged to pay the costs of his defence if his economic situation improves in the next 3 years.

Diagram 51. Are there any minimum and/or maximum amounts for remuneration for legal assistance (partially) free of charge?



No minimum and/or maximum amounts: AT; BE; DK; EE; IT; LU; ES; SE
Yes: BG; CY; CZ; FI; FR; EL; IE; LV; LT; NL; PL; PT; RO; SK; SI; UK

Diagram 52. Is the suspect who benefits from legal assistance (partially) free of charge obliged to pay a financial contribution?



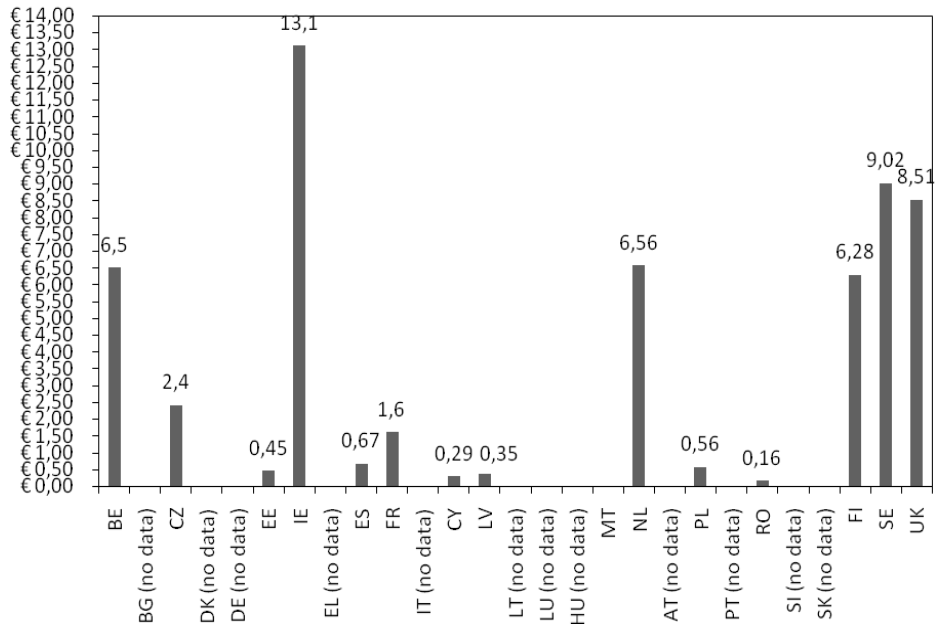
No obligation to pay financial contribution: BG; CY; CZ; DK; EL; IE; IT; LV; LU; PL; RO; SI
Yes: AT; BE; EE; FI; FR; LT; NL; PT; SK; ES; SE; UK

Finally, the respondents were asked to provide numbers on the national budget for legal assistance (partially) free of charge in criminal proceedings and on this national budget as a percentage of the total criminal justice budget (See the diagram on the following page).

It is clear from these figures that there are huge differences among Member States with regard to the amount of money spent on legal assistance (partially) free of charge. However, it should be taken into account that 9 countries could not provide information on the national budget for legal assistance (partially) free of charge and that 3 Member States¹⁰⁵ could only provide for the total legal aid budget (without specifications for legal assistance free of charge in criminal cases). By far the largest criminal legal aid budget can be found in the UK (518.647.945 euro's, 25% of the total criminal justice budget). The smallest budget belongs to Cyprus (232.300 euro's, no data available on the percentage of the total criminal justice budget).

¹⁰⁵ IT; AT; PT.

Diagram 53 ,54 and 55 € Criminal legal aid per inhabitant



Taking into account the total population of the different Member States, the amount of money available for criminal legal aid per inhabitant can be established. These numbers show the enormous differences between Member States when it comes to the amount of money available for legal assistance (partially) free of charge. As is shown from the picture below the 3 highest amounts per inhabitants are available in Ireland (13,1 euro's), Sweden (9,02 euro's) and the UK (8,51 euro's). In 6 – predominantly Central and Eastern European – countries this number of criminal legal aid per inhabitant is below one euro: Romania (0,16 euro's), Cyprus (0,29 euro's), Latvia (0,35 euro's), Estonia (0,45 euro's), Poland (0,56 euro's) and Spain (0,67 euro's).

	Criminal legal aid	Total budget legal aid	% criminal justice budget	Population million	€ criminal legal aid per inhabitant
	Euro's				
BE	54.220.000		6,4 %	8,3	6,5
BG	no data			10,6	
CZ	21.618.962		4,5%	7,6	2,4
DK	40.030.000		no data		
DE	no data			-	
EE	3.447.019		no data	1,3	0,45
IE	55.300.000		2,1%	4,2	13,1
EL	no data			11	
ES	30.900.000		1,61%	46,1	0,67
FR	103.000.000		no data	64,3	1,6
IT		86.562.704	no data	59	
CY	232.300		no data	0,8	0,29
LV	783.013		no data	2,2	0,35
LT	no data		no data	3,3	
LU	no data			0,5	
HU	no data			10	
MT					
NL	108.400.000		3,68%	16,5	6,56
AT		18.897.166	1,69 %	8,3	
PL	21.454.645		1,89 %	38	0,56
PT		42.306.500	no data	10,6	
RO	3.441.655		0,81%	21,5	0,16
SI	no data			2	
SK	no data			5,5	
FI	33.300.000		no data	5,3	6,28
SE	83.074.374		no data	9,2	9.02
UK	518.647.945		25%	60,9	8,51

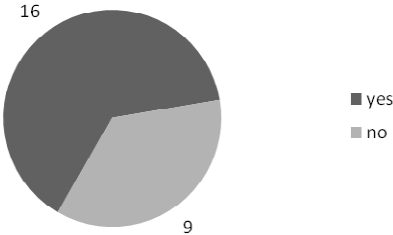
3.2.4 *Quality control*

In the majority of Member States, providing legal assistance (partially) free of charge requires special qualifications. In 9 countries special qualifications are not required (diagram 56). It should be mentioned that in the specifications of these ‘special qualifications’ for providing legal assistance (partially) free of charge nearly half of the respondents refer to general requirements applying to all lawyers (such as being a member of the bar or having a lawyer’s diploma) and not to any specific criteria that lawyers have to meet to be able to provide legal aid. In some Member States, such as Belgium, Bulgaria and Cyprus, the lawyer has to be registered on a list of lawyers who are willing to provide legal assistance free of charge. In Sweden the requirement for providing legal assistance free of charge is rather vague: only a lawyer, who is considered ‘suitable for the assignment’ shall be appointed as public defence counsel.¹⁰⁶ In Lithuania legal assistance free of charge may only be provided by defence lawyers who have entered into the relevant agreements with the services of legal assistance guaranteed by the state. In the Netherlands the lawyer who wants to provide legal assistance free of charge should prove to have finalised his law studies, to have practical experience in dealing with criminal cases and is obliged to participate in additional training every 2 years. He also has to meet certain requirements with regard to the organisation of his office.

More specific requirements can also be found in Spain where – according to an order of 1997 on the establishing of minimum general training and specialization requirements to provide free legal assistance services – the lawyer should have his usual residence and an open law firm in the Bar Association territory, 3 years of actual practicing and the Legal Practice School certificate.

¹⁰⁶ For special reasons, another suitable person whose qualifications make him eligible for appointment as a judge may be appointed as public defence counsel. The court should seek to engage advocates who regularly function as attorneys before the court.

Diagram 56. Are there any special qualifications for providing legal assistance (partially) free of charge?



No special qualifications: AT; CZ; DK; EL; HU; IE; LV; LU; SI

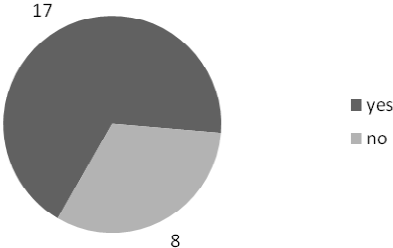
Yes: BE; BG; CY; EE; FI; FR; IT; LT; NL; PL; PT; RO; SK; ES; SE; UK

Very sophisticated regulations exist in England and Wales where an important role is allocated to the Law Society in England and Wales (LSC). The LSC sets a number of requirements for solicitors' firms wishing to undertake criminal legal aid work under contract to the Legal Services Commission. Firms must hold the LSC's Specialist Quality Mark which focuses on the firm's management processes including file management, supervisory arrangements and training. All firms must have at least one supervisor who holds a specified minimum level of legal and managerial competence to supervise other caseworkers. Duty Solicitors wishing to undertake duty solicitor work at the police station and magistrates' court must hold a Duty Solicitor Qualification awarded by the Solicitors Regulation Authority. The LSC has also developed an independent peer review process involving a review of a random sample of files and which focuses on the quality of advice. This is gradually being rolled out across England and Wales. LSC contracts also specify certain performance standards which firms are required to meet and which are monitored by the LSC on an ongoing basis throughout the life of the contract.

In the majority of the other Member States (17) there are certain mechanisms to control the quality of legal assistance (partially) free of charge. In 8 countries though such control mechanisms do not exist (diagram 57). In most jurisdictions the supervision is carried out by the bar (diagram 58). In some Member States quality control is (inter alia) carried out by the government/the legal aid board.¹⁰⁷ In 6 countries 'other methods of quality control' exist. These concern mostly supervision by the judiciary (the judge having the power to withdraw an appointment and to appoint a new lawyer if the lawyer originally appointed does not function well). In Finland the performance of public legal aid attorneys and advocates is supervised by the Bar Association, the Chancellor of Justice as well as the court. In the E&W lawyers working under contract with the Legal Services Commission are thoroughly supervised by this commission.

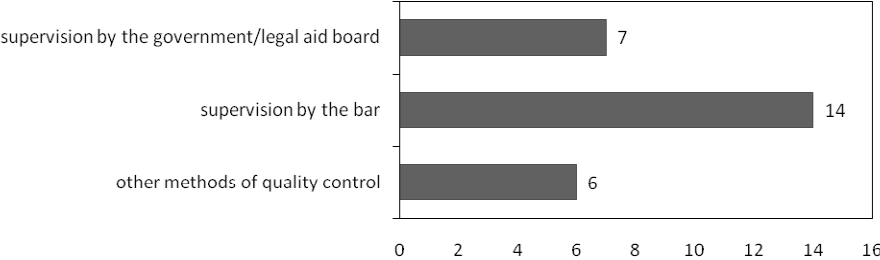
¹⁰⁷ The Netherlands being the only country where this is the only form of control.

Diagram 57. Are there any mechanisms to control the quality of legal assistance (partially) free of charge?



No control mechanisms: CY; EE; EL; HU; IE; LV; LU; SK
Yes: AT; BE; BG; CZ; DK; FI; FR; IT; LT; NL; PL; PT; RO; SI; ES; SE; UK

Diagram 58. What kinds of mechanisms exist to control the quality of legal assistance (partially) free of charge?



Supervision by the government/Legal aid board: BG; LT; NL; DK; ES; SE; UK
Supervision by the bar: AT; BE; BG; CZ; FI; DK; IT; LT; PL; PT; RO; ES; SE; UK
Other methods of quality control: FI; FR; PL; RO; SI; UK

3.2.5 *Legal assistance (partially) free of charge in special circumstances*

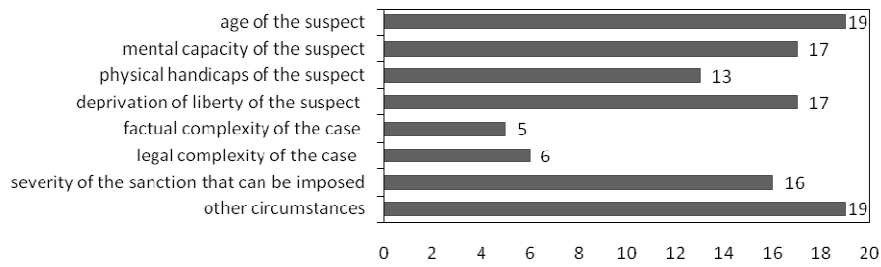
In the vast majority of Member States there are circumstances in which legal assistance in criminal proceedings is obligatory. Only in Ireland and the Netherlands there are no cases of obligatory defence.

As can be seen from diagram 60 there are many different grounds for mandatory legal assistance. In a considerable number of countries certain personal circumstances connected to the (physical or mental) condition of the suspect are relevant criteria (age, mental capacity or physical handicap of the suspect). The factual and/or legal complexity of the case is a relevant factor in only a small number of countries. However, the severity of the sanction that can be imposed is a ground for mandatory defence in a large number of Member States. The fact that the suspect is deprived of his liberty is a ground for obligatory defence in the majority of Member States (17).

In 19 countries there are also 'other circumstances' in which the assistance of a defence lawyer is obligatory. From the specifications provided for by the respondents it is clear that there are many different categories of such 'other circumstances'. However, certain grounds for mandatory defence appear in several Member States. Such as the fact that:

- the case is dealt with by a jury and/or by lay judges,
- the accused has no command of the language used in court,
- the case is tried in the absence of the accused,
- assistance by a defence lawyer is deemed necessary by the court,
- certain special (for example expedited or extradition) proceedings are followed or
- there is a conflict of defence interests between different suspects/accused and at least one of them already has a defence lawyer.

Diagram 60. Which circumstances are grounds for obligatory defence?



Age of the suspect: AT; BE; BG; CZ; EE; FI; FR; DE; EL; HU; LV; LT; LU; PL; PT; RO; SK; SI; UK

Mental capacity of the suspect: AT; BE; BG; CZ; EE; FI; FR; DE; EL; HU; LV; LT; PL; PT; SK; SI; UK

Physical handicaps of the suspect: AT; BG; CZ; EE; DE; HU; LV; LT; PL; PT; SK; SI; UK

Deprivation of liberty of the suspect: AT; BG; CZ; DK; EE; FI; FR; DE; HU; LT; NL; PL; PT; RO; SK; SI; UK

Factual complexity of the case: AT; BG; DE; EL; PL

Legal complexity of the case: AT; BG; DE; EL; PL; RO

Severity of the sanction that can be imposed: AT; BE; BG; CZ; DK; EE; FI; FR; DE; EL; HU; LT; PL; RO; SK; SI

Other circumstances: AT; BG; CY; CZ; DK; EE; FI; DE; HU; IT; LV; LT; PT; RO; SK; SI; ES; SE; UK

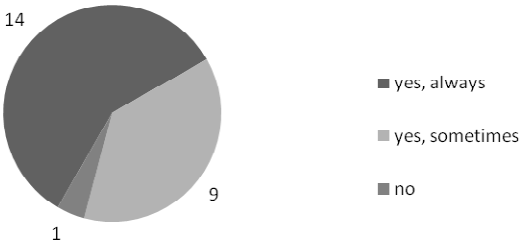
In Sweden obligatory defence does exist but without any particular grounds specified by law. Finally, it is worth mentioning that in Italy the assistance of a lawyer in criminal cases is always obligatory.

The costs for obligatory defence are covered by the state in almost all Member States. Only in Germany this is not the case.¹⁰⁸ In the majority of countries the state always pays for the costs of obligatory defence, in a number of countries (9) this only happens sometimes (diagram 61). In Member States where the state 'sometimes' pays for mandatory defence 2 main categories of situations may be distinguished. Firstly, the situation in which mandatory legal assistance is only paid for by the state if the suspect is indigent and therefore qualifies for legal assistance (partially) free of charge. Secondly, there is the situation in which mandatory defence is – initially – paid for by the state. In case the accused is found guilty he can be obliged to reimburse the defence costs, although the financial situation of the convict will in most cases be taken in to account

Special reference should be made to Lithuania where – regardless of his entitlement to legal assistance guaranteed by the state – a suspect himself may enter into agreement on the provision of legal services with a private practicing defence lawyer. In this case, the costs must be covered by the suspect himself. Legal assistance guaranteed by the state can only be provided by defence lawyers who have entered into the relevant agreements with the services of legal assistance guaranteed by the state, and other attorneys or other 'special' lawyers may not be appointed. Therefore, in Lithuania, whether the costs for mandatory defence will be covered by the state will depend entirely on which defence lawyer has appeared in the case.

¹⁰⁸ It should be taken into account that 2 countries – the Netherlands and Ireland – did not answer this question.

Diagram 61. Are the costs for obligatory defence covered by the state?



Costs sometimes covered by the state: BE; CZ; DK; EE; FR; HU; PL; PT; ES

Costs never covered by the state: DE

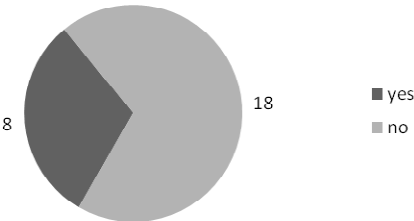
Costs always covered by the state: AT; BG; CY; FI; EL; IT; LV; LT; LU; RO; SK; SI; SE; UK

In the majority of Member States there is no possibility to appoint some sort of independent counsel such as *amicus curiae* or a special advocate. 8 countries¹⁰⁹ indicate that such a possibility does exist (diagram 62). However, from the specifications provided by these 8 countries it is clear that actual independent counsel as meant in the questionnaire only exists in some of these Member States.¹¹⁰ For example, in Cyprus the Attorney General of the Republic can be appointed as *amicus curiae* when the interests of justice so require. Also, in England and Wales the ability to appoint special counsel covers such areas as public interest immunity hearings. There is a possibility to appoint “*amicus curiae*” in litigation before the Scottish courts, who do not appear as a party to a case/on direct instructions from a party, but who can e.g. offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it. However, in practice, it is not thought that much, if any, use is made of this possibility in criminal proceedings in Scotland.

¹⁰⁹ AT; BE; CY; DK; FR; LT; PL; UK.

¹¹⁰ Some of the respondents refer to general mandatory defence counsel appointed by the court (Austria) or to representatives of social organisations (for example for the protection of human rights and freedoms) who may participate in the judicial proceedings if there is a need to protect the public interest represented by the organisation (Poland).

Diagram 62. Is there a possibility to appoint an independent counsel, such as an amicus curiae or special advocate?



Possibility to appoint independent counsel: AT; BE; CY; DK; FR; LT; PL; UK

No: BG; CZ; EE; FI; DE; EL; HU; IE; IT; LV; LU; NL; PT; RO; SK; SI; ES; SE

3.2.6 *Conclusions on the right to legal assistance (partially) free of charge*

Although the right to legal assistance (partially) free of charge exists in all Member States (with the exception of one) there are considerable differences in the implementation of this right.

First of all, there is a wide variety in the way the eligibility for legal aid is to be determined: most Member States provide for some sort of merits and/or means test but the meaning and contents of these tests vary widely. In some countries the means test is very vague raising the question of its added value.

A second striking fact is that in 4 countries there is no legal obligation to inform the suspect of his right to legal assistance (partially) free of charge. Where this obligation does exist, there is considerable variation as to:

- the moment at which the obligation arises;
- the manner in which the information should be provided (only in a few countries the right to legal assistance free of charge is mentioned in a letter of rights);
- the authority deciding on the request for legal assistance (partially) free of charge and
- the authority deciding on which lawyer should be appointed.

The study also shows that in many countries there is no time limit for deciding on a request for legal aid; where such a time limit does exist it is often vague. In a few Member States there is no legal remedy available when the request for legal aid is denied. Also important is the fact that in the majority of countries the specialisation and the availability of the lawyer are not taken into account when deciding on which lawyer to appoint to a case.

Furthermore, there is a wide variety in the way in which legal assistance free of charge is remunerated. The information on the available budget for criminal legal aid provided by the Member States shows the enormous differences in financial recourses available for legal assistance free of charge. Especially in some Central and Eastern European countries the number of available criminal legal aid per habitant is remarkably low (below one euro). Also, striking is the fact that in a considerable number of countries such data are not available. This raises the question how the functioning of the legal aid system can be monitored and evaluated if such basic information on financial recourses is not known.

Although in most Member States there are special requirements for the lawyer providing legal assistance free of charge, in many cases it is clear from the specifications that these requirements are of a rather general nature and not limited to providing legal assistance free of charge. In a considerable number of countries there are no mechanisms to control the quality of legal assistance free of charge and – in other Member States – the authorities carrying out this kind of control vary widely. Consequently, there seems to be a substantial divergence in the way the quality of free legal assistance is controlled and ensured.

3.3 The right to translation of documents and the right to interpretation

3.3.1 *The right to translation*

In 5 Member States suspects do not have the right to be provided with a written translation of certain documents when he does not understand the language in which they are drawn up (diagram 63).

Procedure

Only 5 Member States have an established procedure for ascertaining whether there is a need for translation (diagram 64).¹¹¹

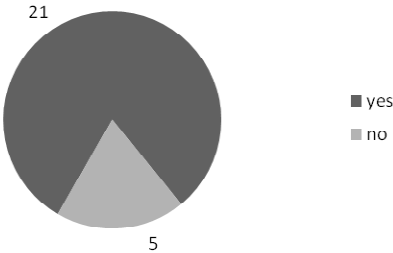
In these Member States it will usually be the judge who decides whether translation is necessary. In the United Kingdom however, at early stages of proceedings, the police/prosecution will decide (while during court proceedings the court itself may also request translations).

In all Member States, translation of documents in criminal proceedings is provided at the state's expense.

In 9 Member States there are standard fees for legal translation of documents.

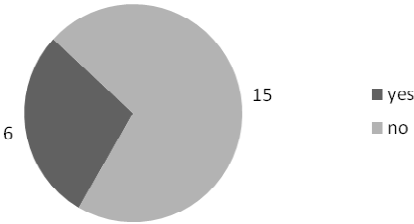
¹¹¹ Established procedure: BE; SK; EE

Diagram 63. When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?



No translation of documents: AT; BG; FR; LV; PT
Yes: BE; CY; CZ; DK; EE; FI; DE; EL; HU; IE; IT; LT; LU; NL; PL; RO; SK; SI; ES; SE; UK

Diagram 64. Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?



No established procedure: CY; CZ; EE; FI; DE; EL; HU; IE; IT; LT; LU; NL; PL; RO; SI
Yes: BE; DK; SK; ES; SE; UK

Scope of the right to translation

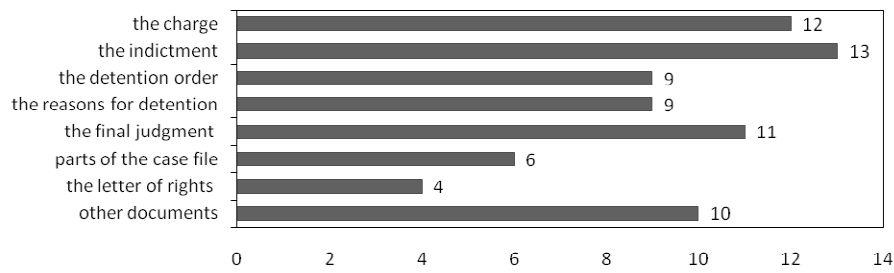
In 21 Member States where there is a right to translation of documents, there is a considerable variation as to what extent this right applies to certain documents (diagram 68).

The majority of these Member States provides for a translation of the charge and the indictment.

Approximately half of these Member States provides for a translation of the detention order, the reasons for detention, the final judgment or 'other documents'.

Only a small number of these Member States provides for a translation of parts of the case file and the letter of rights.

Diagram 68. Does the suspect have the right to be provided with a written translation of...?



The charge: CZ; EE; DE; EL; HU; IE; IT; LT; LU; PL; SK; SI

The indictment: CZ; EE; EL; HU; IE; IT; LT; LU; NL; PL; RO; SK; ES

The detention order: CZ; EL; HU; IT; LT; LU; PL; RO; SK

The reasons for detention: CZ; EL; HU; IT; LT; LU; PL; RO; SK

The final judgment: CZ; EE; FI; HU; IT; LT; LU; PL; RO; SK; ES

Parts of the case file: EL; IT; LT; LU; RO; SK

The letter of rights: LU; SK; ES; IT

Other: BE; CY; CZ; FI; DE; DK; HU; LT; SE; UK

Information on the right to translation

In 8 Member States there is no legal obligation to inform the suspect on his right to translation (diagram 69).

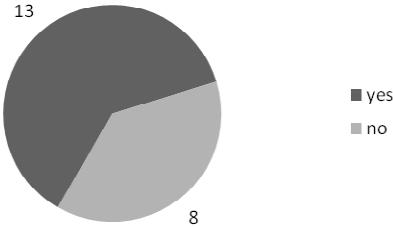
In only 4 of those Member States where such an obligation does exist, the duty to inform the suspect of the right to translation arises promptly after arrest. In the other Member States this duty arises at a certain stage of the investigation or the proceedings.

The way in which suspects are informed of their right to translation varies significantly (diagram 71). In 10 Member States where there is an obligation to inform the suspect on his right to translation, the suspect should be informed orally. In 3 Member States this should be done in writing. Only in 2 Member States this should be done by means of a letter of rights.

In 11 of those Member States where there is a legal obligation to inform the suspect on his right to translation, providing the information on this right in a language the suspect understands is legally obliged.

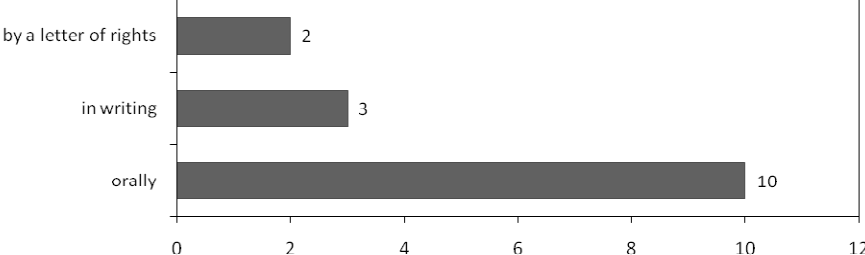
The right to written translation of important documents in criminal proceedings that are important for a suspect in order to be able to exercise his rights and prepare his defence is not provided in all Member States.

Diagram 69. Is there a legal obligation to inform the suspect on his right to translation?



No legal obligation: DK; EE; FI; DE; IT; LU; NL; UK
Yes: BE; CY; CZ; EL; HU; IE; LT; PL; RO; SK; SI; ES; SE

Diagram 71. How should the suspect be informed of his right to translation?



Orally: BE; CY; EL; HU; LT; RO; SK; SI; ES; SE;
In writing: HU; IE; LT
Letter of rights: CZ; PL

3.3.2 *The right to interpretation*

In all 26 Member States that responded, the suspect has the right to have the assistance of an interpreter when he does not understand the language used in the proceedings/in court.

Procedure

In 9 Member States there is an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings (diagram 74).

The majority of these Member States indicates that a judge will decide whether interpretation is necessary. 2 Member States, the Netherlands and the United Kingdom state that the police can decide autonomously whether the suspect is to be accorded the assistance of an interpreter. In nearly all Member States, interpretation is fully provided at the state's expense. Only in Austria this is done partly.

Member States greatly differ as to the presence of standard fees for legal interpretation. Only 14 Member States have standard fees. A similar division exists regarding the availability of a scheme for emergency linguistic assistance for suspects being held for questioning at the police station (12 Member States have such a scheme) and for emergency linguistic assistance in courts (11 Member States have such a scheme).

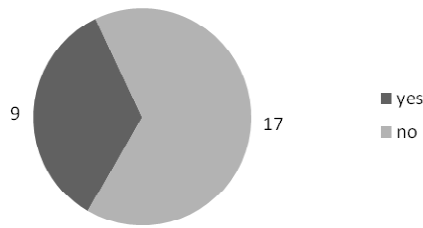
Scope of the right to interpretation

The extent to which the right to interpretation is guaranteed in Member States shows some variation (diagram 80). In all Member States that responded an interpreter will be present during the questioning of the suspect by the police or at trial when the suspect does not understand or speak the language of the proceedings. In 5 Member States an interpreter will not be present at the consultation of the suspect with his lawyer. The majority of Member States indicated that an interpreter will also be present at 'other procedural occasions/activities or hearings'.

A remarkable finding is the difference between the availability of special provisions/arrangements for suspects who are visually or hearing impaired. Only half of the Member States have such special provisions for suspects who are visually impaired, while only 3 Member States¹¹² do not have special provision for suspects who are hearing impaired.

¹¹² EL; LV; SI.

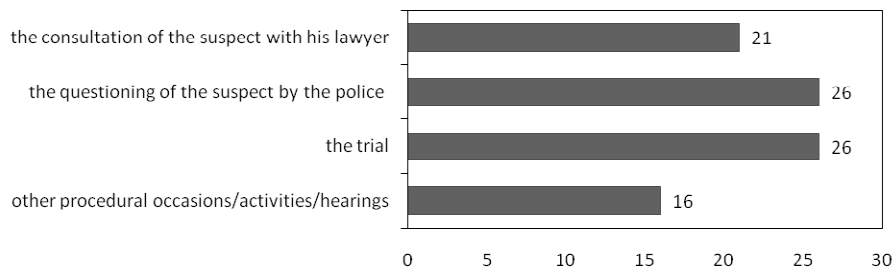
Diagram 74. Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?



Yes, established procedure: BE; DK; CY; NL; PT; SK; ES; SE; UK

No established procedure: AT; BG; CZ; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; PL; RO; SI

Diagram 80. When the suspect does not understand the language used in the proceedings/in court, is an interpreter present at...?



The consultation of the suspect with his lawyer: AT; CY; CZ; DK; EE; FI; DE; EL; IE; IT; LT; LU; NL; PL; PT; RO; SK; SI; ES; SE; UK

The questioning of the suspect by the police: AT; BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI; ES; SE; UK

The trial: AT; BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI; ES; SE; UK

Other procedural occasions/activities/hearings: BG; CY; CZ; DK; FR; DE; HU; IT; LV; LT; LU; NL; PL; PT; SE; UK

Information on the right to interpretation

In 9 Member States there is no legal obligation to inform the suspect on his right to interpretation (diagram 83). In 8 of these 9 Member States the duty to inform the suspect of this right arises promptly after arrest. In the other Member States the duty arises at a certain stage of the investigation or the proceedings.

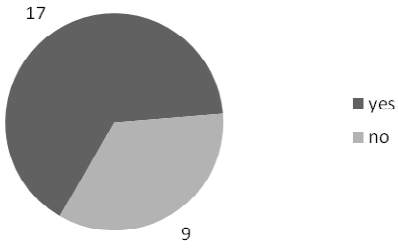
The way in which suspects are informed of their right to interpretation varies significantly (diagram 85). In 15 Member States, the suspect should be informed orally. In 3 Member States this should be done in writing. In 6 Member States this should be done by means of a letter of rights. Only one Member State (Luxembourg) that indicated that the suspect should be informed in writing also indicated the presence of a letter of rights.

In 15 of those Member States where there is a legal obligation to inform the suspect on his right to interpretation, providing the information on this right in a language the suspect understands is legally obliged.

3.3.3 *Conclusions on the right to translation and interpretation in criminal proceedings*

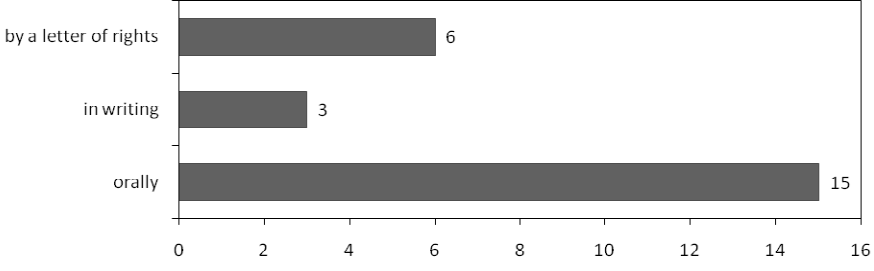
Although the right to interpretation exists in all Member States and the right to translation of documents is guaranteed in all but 5 Member States, the analysis shows a great divergence regarding the implementation of these rights. This divergence specifically applies to whether there is a legal obligation to be informed on these rights and to the scope of the rights.

Diagram 83. Is there a legal obligation to inform the suspect on his right to interpretation?



No legal obligation: BG; DK; EE; FI; FR; DE; IT; LU; NL
Yes: AT; BE; CY; CZ; EL; HU; IE; LV; LT; PL; PT; RO; SK; SI; ES; SE; UK

Diagram 85. How should the suspect be informed of his right to interpretation?



Orally: AT; BE; CY; EL; HU; IE; LV; LT; LU; PT; RO; SK; SI; ES; SE
In writing: HU; LI; LU
Letter of rights: AT; CZ; LU; PL; SE; UK

3.4 Other fundamental guarantees and the right to be informed on them

3.4.1 Information on the right to be informed on the charge

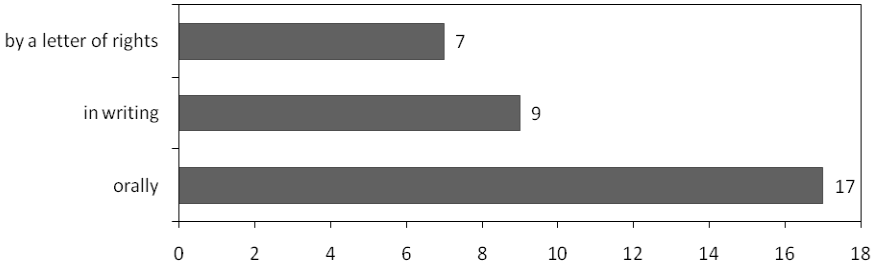
All Member States accord the suspect the right to be informed on the charge (nature and cause of the accusation against him). In 5 Member States however there is no legal obligation to inform the suspect on his right to be informed on the charge.

In nearly all Member States where there is a duty to inform the suspect on his right to be informed on the charge, this duty arises at a given stage of the investigation or the proceedings, even in situations without arrest. In one Member State (Belgium) this duty arises within [...] hours after arrest. In another Member State (Greece) this duty arises promptly after arrest.

The way in which suspects are informed of their right to be informed on the charge varies significantly (diagram 90). In 17 Member States, the suspect should be informed orally. In 9 Member States this should be done in writing. In 7 Member States this should be done by means of a letter of rights.

In 18 of those Member States where there is a legal obligation to inform the suspect on his right to be informed on the charge, providing the information on this right in a language the suspect understands is legally obliged.

Diagram 90. How should the suspect be informed of his right to be informed on the charge?



Orally: AT; BE; BG; CY; DK; EE; EL; HU; IE; IT; LT; LU; RO; SK; SI; SE; UK

In writing: BE; BG; EE; HU; LI; LU; PT; RO; UK

Letter of rights: AT; CZ; LV; LU; PL; SE; UK

3.4.2 *Information on access to the file*

The right for a suspect to have access to the file is not guaranteed throughout the EU. In 4 Member States, this right is not provided.¹¹³ Moreover, in 6 of those Member States where such a right exists, there is no legal obligation to inform the suspect on his right to have access.¹¹⁴ In 2 of those Member States providing the information on this right in a language the suspect understands is not legally obliged.

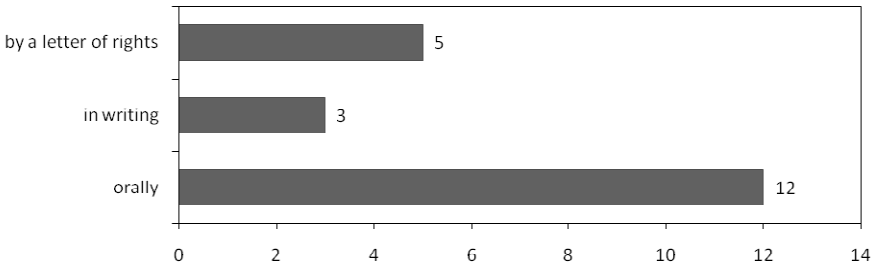
In nearly all Member States where there is a duty to inform the suspect on his right to have access to the file, this duty arises at a given stage of the investigation or the proceedings, even in situations without arrest. In 2 Member States (Greece and the Slovak Republic) this duty arises promptly after arrest. The way in which suspects are informed of their right to have access to the file varies significantly (diagram 95). In 12 Member States, the suspect should be informed orally. In 3 Member States this should be done in writing. In 5 Member States this should be done by means of a letter of rights.

Finally, the great majority of Member States where the right to have access exists, provides the suspect with a written translation of the indictment, the detention order, the reasons for detention and the final judgment (diagram 97).

¹¹³ EE; FR; DE; ES.

¹¹⁴ BE; DK; FI; LU; NL; UK.

Diagram 95. How should the suspect be informed of the right to have access to the file?

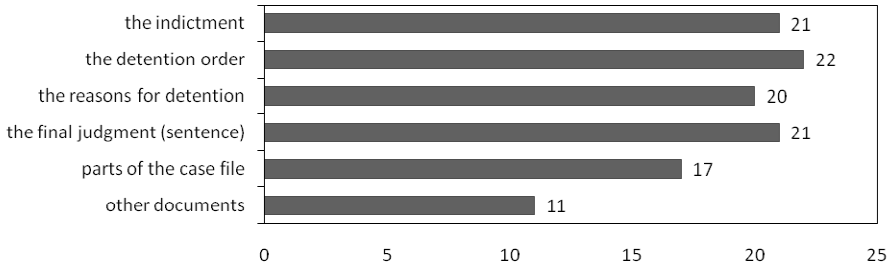


Orally: AT; BG; CY; EL; IE; IT; LT; PT; RO; SK; SI; SE

In writing: BG; HU; LT

Letter of rights: AT; CZ; IT; LV; PL

Diagram 97. Does the suspect have the right to be provided with a written version of...?



The indictment: BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LT; LU; NL; PL; PT; RO; SK; SI

The detention order: BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI

The reasons for detention: BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IT; LT; LU; NL; PL; PT; RO; SI; ES

The final judgment (sentence): BE; BG; CY; CZ; DK; FI; FR; DE; EL; HU; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI; ES

Parts of the case file: BE; BG; CY; DK; FI; DE; EL; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI

Other documents: AT; CY; CZ; EE; DK; HU; LV; LT; SI; SE; UK

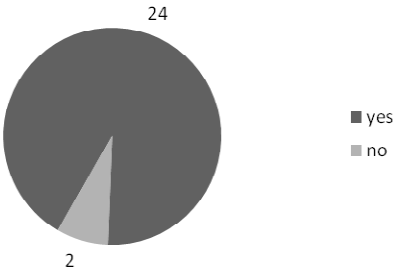
3.4.3 *Information on the right to remain silent*

The right for a suspect to remain silent during criminal investigations and proceedings is not provided for in 2 Member States (Luxembourg and France) (diagram 98). Moreover, in 2 of those Member States where such a right exists, there is no legal obligation to inform the suspect on his right to remain silent (Belgium and Finland). In one Member State (the Netherlands) providing the information on this right in a language the suspect understands is not legally obliged.

In nearly all Member States where there is a duty to inform the suspect on his right to remain silent, this duty arises at a given stage of the investigation or the proceedings. In 5 Member States this duty arises promptly after arrest.¹¹⁵ In most Member States suspects should be informed orally on their right to remain silent. In 5 Member States this should be done in writing. In 4 Member States this should be done by means of a letter of rights (diagram 101).

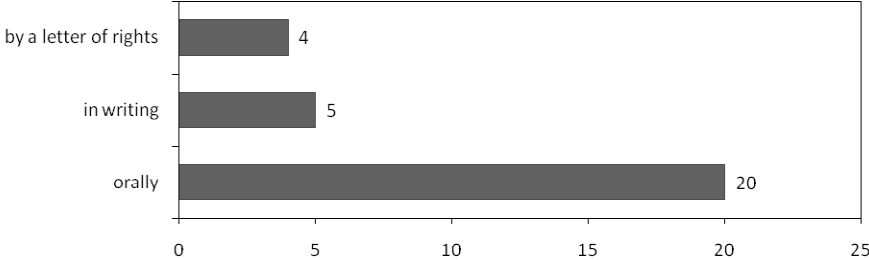
¹¹⁵ EL; IR; LV; SK; ES

Diagram 98. Does the suspect have a right to remain silent during criminal investigations and proceedings?



Yes: AT; BE; BG; CY; CZ; DK; EE; FI; DE; EL; HU; IE; IT; LV; LT; NL; PL; PT; RO; SK; SI; ES; SE; UK
No: FR; LU

Diagram 101. How should the suspect be informed of his right to remain silent?



Orally: AT; BG; CY; DK; EE; DE; EL; HU; IE; IT; LV; LT; NL; PT; RO; SK; SI; ES; SE; UK.
In writing: BG; EE; LT; RO; UK.
Letter of rights: AT; CZ; PL; UK.
No right to remain silent: FR; LU

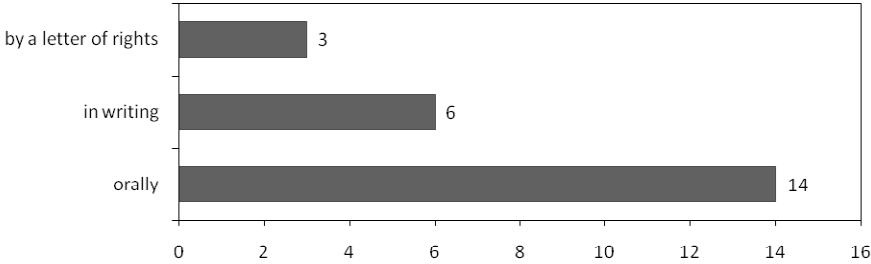
3.4.4 Information on the right to call and examine witnesses/experts

The right for a suspect to call and examine witnesses or experts is not provided for in 2 Member States (Latvia and Portugal). In 6 Member States where such a right exists, there is no legal obligation to inform the suspect on the right to call and examine witnesses.¹¹⁶ In 2 Member States (the Netherlands and Ireland) providing the information on this right in a language the suspect understands is not legally obliged.

In 15 Member States where there is a duty to inform the suspect on his right to call and examine witnesses or experts, this duty arises at a given stage of the investigation or the proceedings. In 2 Member States (Slovak Republic and Spain) this duty arises promptly after arrest and in one Member State within [...] hours after arrest (the Netherlands). In the majority of Member States suspects should be informed orally on their right to call and examine witnesses or experts. In 6 Member States this should be done in writing. In 3 Member States this should be done by means of a letter of rights (diagram 106).

¹¹⁶ BE; DK; FI; FR; EL; LU.

Diagram 106. How should the suspect be informed of his right to call and examine witnesses/experts?



Orally: AT; BG; CY; EE; HU; IE; IT; LT; RO; SK; SI; ES; SE; UK

In writing: BG; EE; DE; LT; NL; SE

Letter of rights: AT; CZ; PL

3.4.5 *Conclusions on other fundamental guarantees and the right to be informed on them*

A striking finding is the fact that fundamental rights such as the right to remain silent, to have access to the file and to call and/or examine witnesses or experts are not provided for in all Member States. A remark applicable to all the rights described above (including the right to be informed on the charge) is the substantial divergence in the way suspects are informed as well as the absence of a general legal obligation to be informed on these rights.

3.5 European arrest warrant and other mutual recognition instruments

3.5.1 *With respect to the European Arrest Warrant: are the same rights as mentioned in chapter 1-4 applicable to EAW proceedings?*

The right to legal advice as guaranteed in domestic cases applies in all Member States with respect to the European Arrest Warrant (diagram 108).¹¹⁷ With regard to the right to legal assistance free of charge, 2 Member States (Germany and Sweden) reported that this right is only partly applicable to EAW proceedings.

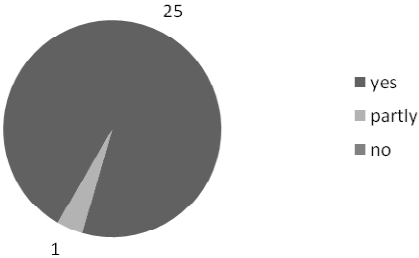
4 Member States only partly apply the right to interpretation and the right to translation of documents to EAW proceedings.¹¹⁸

Nearly all Member States apply the right to information concerning fundamental procedural rights equally to EAW proceedings. 2 Member States (France and United Kingdom) restrict this information to the right to be informed on the charge.

¹¹⁷ 1 Member State (Sweden) indicated that this is only partly the case but the specifications of the questionnaire reveal that in fact the same right applies “as during an ordinary Swedish preliminary investigation and trial”.

¹¹⁸ FR; NL; SE; UK.

Diagram 108. Does the right to legal advice apply to proceedings concerning the European Arrest Warrant?



Partly: SE

Yes: AT; BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; IT; LV; LT; LU; NL; PL; PT; RO; SK; SI; ES; UK

No: -

3.5.2 *With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?*

The right to legal advice as guaranteed in domestic cases does not apply in all Member States with respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties (diagram 112). In 2 Member States (Germany and Slovenia) this right is not provided for. In 6 Member States the right to legal advice is only partly applied to these proceedings. With regard to the right to legal assistance free of charge, several Member States reported that this right is not (3)¹¹⁹ or only partly (5)¹²⁰ applicable to such proceedings.

4 Member States only partly apply the right to interpretation and the right to translation of documents to these proceedings while in such cases 3 Member States do not provide for these rights at all.¹²¹

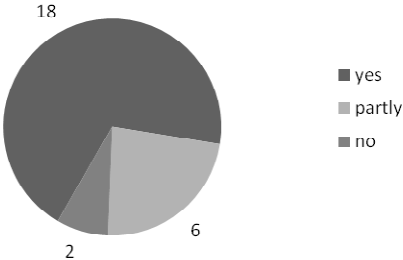
In 19 Member States the right to information concerning fundamental procedural rights is applied equally to these proceedings. One Member State (Slovak Republic) only provides for the right to information on the charge while one Member State (Austria) applies the right to information on access to the file, on the right to remain silent and on the right to call or examine witnesses/experts but not to information on the charge.

¹¹⁹ DE; IR; SI.

¹²⁰ FR; IT; NL; SK; SE.

¹²¹ FR; DE; SI.

Diagram 112. Does the right to legal advice apply to the Framework decision on the Application of the Principle of Mutual Recognition to Financial Penalties?



No: DE; SI

Partly: BG; IT; NL; SK; SE; UK

Yes: AT; BE; CY; CZ; DK; EE; FI; FR; EL; HU; IE; LV; LT; LU; PL; PT; RO; ES

3.5.3 *With respect to the Framework Decision on the execution in the European Union of orders freezing property or evidence: are the same rights as mentioned in chapter 1-4 applicable to these proceedings?*

The right to legal advice as guaranteed in domestic cases does not apply in all Member States with respect to the Framework Decision on the execution in the EU of orders freezing property or evidence (diagram 116). In 1 Member State (Slovenia) this right is not provided for. In 5 Member States the right to legal advice is only partly applied to these proceedings. With regard to the right to legal assistance free of charge, several Member States reported that this right is not (2)¹²² or only partly (6)¹²³ applicable to such proceedings.

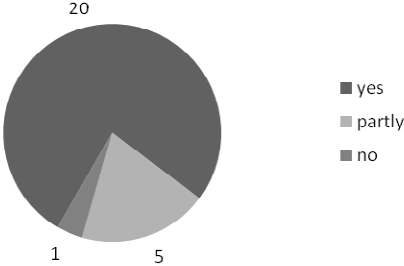
3 Member States only partly apply the right to interpretation and the right to translation of documents to these proceedings while in such cases 2 Member States (France and Slovenia) do not provide for these rights at all.

In 21 Member States the right to information concerning fundamental procedural rights is applied equally to these proceedings. One Member State (Austria) applies the right to information on the charge, on the access to the file, on the right to remain silent but not on the right to call or examine witnesses/experts.

¹²² IR; SI.

¹²³ AT; FR; DE; IT; NL; SE.

Diagram 116. Does the right to legal advice apply to proceedings concerning the Framework Decision on the Execution in the EU of Orders Freezing Property or evidence?



No: SI

Partly: AT; IT; NL; SE; UK

Yes: BE; BG; CY; CZ; DK; EE; FI; FR; DE; EL; HU; IE; LV; LT; LU; PL; PT; RO; SK; ES

3.5.4 *With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders are the same rights as mentioned in chapter 1-4 applicable to these proceedings?*

The right to legal advice as guaranteed in domestic cases does not apply in all Member States with respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders (diagram 120). In 2 Member States this right is not provided for. In 6 Member States the right to legal advice is only partly applied to these proceedings. With regard to the right to legal assistance free of charge, several Member States reported that this right is not (4)¹²⁴ or only partly (4)¹²⁵ applicable to such proceedings.

3 Member States only partly apply the right to interpretation and the right to translation of documents to these proceedings while in such cases 4 Member States¹²⁶ do not provide for these rights at all.

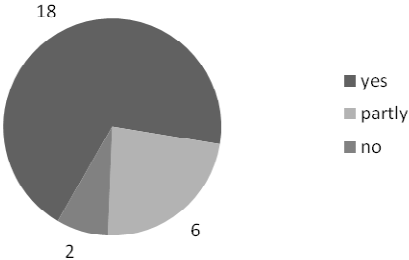
In 19 Member States the right to information concerning fundamental procedural rights is applied equally to these proceedings. One Member State (Austria) applies the right to information on access to the file, on the right to remain silent and on the right to call or examine witnesses/experts but not on information on the charge.

¹²⁴ DE; IR; LI; SI.

¹²⁵ FR; IT; NL; SE.

¹²⁶ FR; DE; LI; SI.

Diagram 120. Does the right to legal advice apply to proceedings concerning the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders?



Yes: AT; BE; CY; CZ; DK; EE; FI; FR; EL; HU; IE; LV; LU; PL; PT; RO; SK; ES

Partly: BG; IT; LT; NL; SE; UK

No: DE; SI

3.5.5 Conclusions on the European Arrest Warrant and other mutual recognition instruments

When comparing the results of the analysis between the various mutual recognition instruments, some main findings can be distinguished quite easily. Firstly, the European Arrest Warrant (EAW) clearly is the instrument that is treated the most as being equal to the domestic proceedings. The right to legal advice, for example, is applied to EAW proceedings in all Member States in the same way as for domestic cases. Secondly, conclusions as to the 'partial' application of certain rights with regards to mutual recognition instruments should be made with caution since some Member States have responded in this way when the particular instrument has not yet been implemented into national law. Thirdly, those Member States not applying certain rights with regards to the various mutual recognition instruments are often the same. Finally, the great majority of Member States applies the right to information on fundamental procedural guarantees to the mutual recognition proceedings equally as for domestic proceedings.

4 Conclusions and analysis of conformity with ECHR standards

4.1 The right to information

In this study “the right to information” is dealt with as an overarching horizontal issue that is highly relevant for procedural rights being practical and effective. We have distinguished 2 dimensions. First, the right of anyone charged with a criminal offence to be informed on the nature and cause of the accusations against him and to have access to the evidence on which these accusations are based as guaranteed by Art. 5 and 6 ECHR). Secondly, the right to information in the sense of being informed on fundamental procedural rights, which as such is not covered by the ECHR.

A notable finding of this study is the fact that the right to remain silent is no statutory right in France and Luxembourg and the right to have access to the file is not provided for on behalf of the suspect in legislation in Estonia, France, Germany and Spain, both being basic requirements of a fair trial in the ECHR.

A remark applicable to all the rights that are the subject of this study (including the right to be informed on the charge) is the substantial divergence in the way suspects are informed as well as the absence of legal obligations for the authorities to inform the suspect on these fundamental procedural rights.

With regards to the right to contact a lawyer after arrest, all Member States have a legal obligation to inform the suspect on this right, but this information is not always given immediately after arrest. Also, the moment at which the obligation to inform the suspect of his right to have a lawyer present during police interrogation varies from promptly after arrest until a later stage in the investigation or proceedings. This right is obviously only effective when the suspect is timely informed on it and if he is offered the opportunity to contact a lawyer before the first police interrogation. In many Member States where there is a right to legal assistance during police interrogation, there are no provisions to secure the effectuation of this right.

The same applies to information on the right to legal aid. In 4 Member States there is no legal obligation to inform the suspect of the right to legal assistance (partially) free of charge and in the remainder of the Member States where a legal obligation to inform the suspect does exist, the moment at which the duty arises varies considerably as well as the manner in which the information is given. In the majority of the countries the information is given orally and in only 4 countries this information is provided in a letter of rights.

A similar picture can be drawn with regard to information on the right to interpretation and translation. In 8 Member States there is no legal obligation to inform the suspect on his right

to interpretation and in 9 Member States there is no obligation to inform the suspect on his right to translation.

Striking is that in Belgium and Finland there is no legal obligation to inform the suspect of his right to remain silent and in 6 Member States there is no obligation to inform the suspect of his right to call and examine witnesses.

In 10 Member States the suspect is informed about (one or more of) his rights by means of a Letter of rights (Austria, Czech Republic, England and Wales, Italy, Latvia, Luxemburg, Poland, Slovak Republic, Spain and Sweden). However, there are great differences between these EU Member States as to which rights are included. Many Letters of Rights do not mention the right to remain silent or the right to translation or interpretation and sometimes there is no letter of rights available in the language the suspect understands.

4.2 The right to legal assistance

According to the case law of the ECtHR the right to contact a legal advisor – as part of the general right to legal assistance which is covered by Art. 6 § 3 b and c ECHR – arises immediately upon arrest. The study shows that the right to contact a lawyer after arrest exists in most Member States. However, there is a great divergence as to the moment at which the right to contact a lawyer can be effected. For example, in a considerable number of countries this is not possible immediately after arrest – as required by the ECHR – but only at a given stage of the investigation or the proceedings.

Also, it follows from recent judgments of the ECtHR that access to a lawyer should as a rule be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of the case that there are compelling reasons to restrict this right. Furthermore, the ECtHR has held that the lack of legal assistance during a suspect's interrogation would constitute a restriction of his defence rights and that these rights will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

It can be concluded from the study that the basic rules mentioned above are not common practice throughout the EU: in 4 Member States the right to consult a lawyer before questioning is not guaranteed¹²⁷ and in 5 Member States there is no right for the lawyer to be

¹²⁷ In the Netherlands this has changed as a result of the *Salduz* judgment of the ECtHR Grand Chamber, 27 November 2008, *Salduz* (no. 36391/02). Requested to give an interpretation of the consequences of this judgment for the Dutch practice the Supreme Court of the Netherlands ruled on 30 June 2009 that a suspect has the right to consult a lawyer before the first police interrogation, but

present at interrogations carried out by the police. In almost all countries where the lawyer is allowed to be present, authorities are obliged to inform the suspect of this right but there are considerable differences among Member States as to the moment at which the obligation to inform the suspect of this right arises and the way in which the information is provided to the suspect. Furthermore, in several countries there is no possibility for the defence to deliberate in private during questioning. Finally, the study shows that the presence of a lawyer at the interrogation is not deemed indispensable: only in 3 Member States it is not allowed to use the confession of a suspect made in the absence of his lawyer as evidence in court.

4.3 The right to legal assistance (partially) free of charge

With respect to the right to legal assistance (partially) free of charge – as guaranteed by Art. 6 § 3 c ECHR – it follows from the case law of the ECtHR that Member States have a certain margin of appreciation in choosing a system that appears to them to be most effective. However, free legal assistance should always be available where the interests of justice demands it. The study shows that although the right to legal assistance (partially) free of charge exists in all Member States (with the exception of one) there are considerable differences in the implementation of this right. Especially striking is the wide variety in merits and/or means tests. Also important is the fact that in a small number of countries there is no legal obligation to inform the suspect of his right to legal assistance (partially) free of charge. Where this obligation does exist, there is considerable variation as to the scope of this obligation. Besides the differences in the applicable legal frameworks regulating the right to legal assistance free of charge, the study also shows enormous differences in financial recourses available for legal aid. The remarkable low budgets of some countries raise the question whether despite existing guarantees in the applicable legal framework, it is in – in everyday practice – in fact possible to effectuate the right to free legal assistance whenever the interest of justice demands it.

4.4 Quality of legal assistance (partially) free of charge

The study allows making some remarks as to the quality of the legal assistance (partially) free of charge and the responsibilities of the State in this respect. Although it is clear from the case law of the ECtHR that the lawyer's conduct is essentially an affair between the lawyer and his client, the State is under the obligation to ensure that legal assistance is actually effective. As a result, the Member States need to foresee in some sort of monitoring system.

that only a juvenile suspect has the right to also have a lawyer present during police interrogation (HR 30 June 2009, no. 2411.08 J, NbSr 2009, 249.

The study shows that in a considerable number of countries there are no mechanisms to control the quality of legal assistance free of charge and – in other Member States – the authorities carrying out this kind of control vary widely. Consequently, there seems to be a substantial divergence in the way the quality of free legal assistance is controlled and ensured. Also, the ‘special’ requirements for the lawyer providing legal assistance free of charge are, in many cases, of a rather general nature and not limited to providing legal assistance free of charge. Moreover, in the majority of countries the specialisation and the availability of the lawyer are not taken into account when deciding on which lawyer to appoint to a case.

These findings raise the question whether the quality of legal assistance (partially) free of charge is in fact sufficiently guaranteed throughout the EU.

4.5 The right to interpretation and translation

Although the right to interpretation exists in all Member States, the right to translation of documents is guaranteed in all but 5 Member States. The analysis shows a great divergence regarding the implementation of these rights. This divergence specifically applies to the fact whether there is a legal obligation to be informed on these rights and to the scope of the rights. In 5 Member States there is no provision for interpretation at the consultation of the suspect with his lawyer and some Member States have no provisions for suspects who are visually impaired or hearing impaired. There is also a considerable variety in what documents have to be provided to the suspect, and what documents are translated. It appears from the study that only a slight majority of the Member States provides a written translation of the charge, the detention order, or the final judgment. A letter of rights is only translated in 4 of the 10 countries that provide for a letter of rights. The results of the study show that on the level of practical implementation of the right to interpretation and translation there is a divergence with the requirements that derive from the case law of the ECtHR as summarised in § 2.4.

4.6 Procedural rights in the mutual recognition instruments

When comparing the results of the analysis between the various mutual recognition instruments, some main findings can be distinguished quite easily. First, the European Arrest Warrant (EAW) clearly is the instrument that is treated the most as being equal to the domestic proceedings. The right to legal advice, for example, is applied to EAW proceedings in all Member States in the same way as for domestic cases. Secondly, conclusions as to the 'partial' application of certain rights with regards to mutual recognition instruments should be made with caution since some Member States have responded in this way when the particular instrument has not yet been implemented into national law. Thirdly, those Member States not applying certain rights with regards to the various mutual recognition instruments are often the same. Finally, the great majority of Member States applies the right to information on fundamental procedural guarantees to the mutual recognition proceedings equally as for domestic proceedings.

4.7 Conclusion

A striking finding is the fact that fundamental rights such as the right to remain silent, to have access to the file and to call and/or examine witnesses or experts, that are basic requirements of a fair trial in the ECHR are not provided for in legislations of all Member States.

In general, it follows from the study that although the 4 procedural rights that were subject of this research – the right to information, the right to legal advice, the right to legal assistance (partially) free of charge and the right to interpretation and translation – seem to be guaranteed by law more or less in accordance with the ECHR in the criminal justice systems of the EU. However a more in depth look at the implementation of these rights raises doubts as to whether in all Member States everyday practice is in line with the Strasbourg standard. This underlines the need for EU action.

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Study on Procedural Rights: Existing Level of Safeguards in Member States 2008 - Update



OVERVIEW

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Objective

This questionnaire is part of the '*Study on Procedural Rights: Existing Level of Safeguards in Member States 2008 - Update*' which is carried out by Maastricht University (Prof. dr. Taru N.B.M. Spronken, project coordinator and Dr. Dorris de Vocht) in partnership with the Institute for International Research on Criminal Policy (IRCP) of Ghent University (Prof. dr. Gert Vermeulen and Laurens Van Puyenbroeck) and is funded by the European Commission.

This is a follow up of the study performed by Taru Spronken and Marelle Attinger, '*Procedural Rights in criminal proceedings: Existing Level of Safeguards in the European Union*', funded and published by the European Commission, 12 December 2005 <<http://arno.unimaas.nl/show.cgi?fid=3891>>.

The aim of this questionnaire is to obtain up to date information on the same subject and to gain insight in the level of legal protection offered to suspects and accused in the current 27 EU Member States with respect to the following four fundamental (categories of) procedural rights:

1. the right to legal advice,
2. the right to legal assistance (partially) free of charge,
3. the right to translation of documents and the right to interpretation and
4. other fundamental guarantees and the right to be informed on them.

Please note that the questionnaire is quite extensive. Filling out all the questions and gathering all the necessary data will take approximately about five working days.

Gathering this up to date information is particularly important since the European Commission is considering a new Framework Decision on procedural safeguards for suspects and defendants in the European Union. The results of this questionnaire will provide valuable information in this respect. The research team is therefore very grateful for your effort and cooperation.

Methodology

Structure of questionnaire

The questionnaire is divided into five chapters covering the four different (categories of) procedural rights and a final chapter dealing with the aforementioned rights within procedures concerning the European Arrest Warrant (EAW) and other mutual recognition instruments:

Chapter 1: The right to legal advice

Chapter 2: The right to legal assistance (partially) free of charge

Chapter 3: The right to translation of documents and the right to interpretation

Chapter 4: Other fundamental guarantees and the right to be informed on them

Chapter 5: European Arrest Warrant and other mutual recognition instruments

Please note that chapter 4 covers only the right to be informed:

- on the charge,
- on the access to the file,
- on the right to remain silent and
- on the right to call witnesses.

The right to information on other procedural rights (the right to legal advice, the right to legal assistance (partially) free of charge and the right to translation and interpretation) will be covered under chapter 1, 2, and 3.

In the questionnaire no division is made into the different phases of criminal procedure. Furthermore, no division is made between suspects, accused et cetera: the term 'suspect' in this questionnaire refers to anyone charged with or suspected of a criminal offence, irrespective of the phase of the proceedings.

Explanation

- Several categories of questions are used in this questionnaire. Please note that tick boxes sometimes contain alternative answers (indicated by the words 'choose one of the following answers') whereas sometimes more than one answer is possible (indicated by the words 'check any that apply').
- The answers provided should refer to the relevant legal basis (statute, secondary legislation et cetera) and provide a clarification if relevant (indicated by the words 'please specify').
- When referring to legal provisions, please provide a translation into English of the text of the legal provision. You can use the copy/paste functions in the text fields.
- If – to your knowledge – the applicable legal provision is not applied in practice, please indicate.
- Also, if – to your knowledge – certain actions covered by this questionnaire are carried out in practice but do not have a legal basis, please indicate.
- All questions in this questionnaire are mandatory.
- Please use the 'previous' and 'next' button to navigate through the online questionnaire – do not use your internet browser buttons.
- Please use the 'save/resume later' button frequently to ensure that all entered data are restored correctly.

For more detailed information on how to use the online questionnaire, see the User Guide.

Support

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CHAPTER 1
THE RIGHT TO LEGAL ADVICE

1.1 Contact

001

Does a person have the right to contact a lawyer (legal representative) after his arrest?¹

- a. yes, please specify the legal basis of this right [...]
- b. no

002

If so, when can this right be effected:

- a. immediately upon arrest
- b. within [...] hours after arrest
- c. at a given stage of the investigation or the proceedings, please specify [...]

003

If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

- a. yes, please specify the legal obligation [...]
- b. no

004

If so, when does the duty to inform the suspect of this right arise?

- a. promptly after arrest
- b. within [...] hours after arrest
- c. at a certain stage of the investigation or the proceedings, please specify [...]

005

If so, how should the suspect be informed of this right? (more than one answer possible)

- a. orally
- b. in writing
- c. both orally and in writing
- d. by a letter of rights²

006

Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

007

Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

- a. yes
- b. no

¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

² A letter of rights is understood to mean written information of the suspect's procedural rights in a standardised form.

008

If so, please specify on which grounds:

009

If so, please specify for which period of time?

a. up to [...] hours after arrest

b. until a certain stage of the investigation or the proceedings, please specify [...]

1.1a Free choice

010

Does the suspect have the right to legal assistance of his own choosing?

a. yes, please specify the legal basis of this right [...]

b. no

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011

Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

a. yes, please specify guarantee(s) [...]

b. no

012

Consultation (in person or by telephone) is possible before questioning by the police³?

a. yes, please specify guarantee(s) [...]

b. no

What facilities are there to visit a detained suspect?

More specifically:

013

Can the lawyer visit his client held at the police station?

a. yes

b. no

014

If so, does the lawyer need permission to visit his client held at the police station?

a. yes, please specify required permission [...]

b. no

³ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

015

If so, are lawyer-client visits at the police station limited in time and/or frequency?

- a. yes, please specify limitation(s) [...]
- b. no

016

Can the lawyer visit his client detained in prison⁴?

- a. yes
- b. no

017

If so, does the lawyer need permission to visit his client detained in prison?

- a. yes, please specify required permission [...]
- b. no

018

If so, are lawyer-client visits in prison limited in time and/or frequency?

- a. yes, please specify limitation(s) [...]
- b. no

019

Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

- yes
- no

If so:

019a

Please specify, who can order this surveillance:

019b

Please specify, on which grounds surveillance can be ordered:

019c

Please specify, for which period of time surveillance can be ordered:

019d

Please specify, the kind of surveillance that can be ordered:

019e

Please specify, any legal remedies provided to the defence in this respect:

⁴ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020

Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

- yes
- no

If so:

020a

Please specify, who can order this surveillance:

020b

Please specify, on which grounds surveillance can be ordered:

020c

Please specify, for which period of time surveillance can be ordered:

020d

Please specify, the kind of surveillance that can be ordered:

020e

Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021

Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

- a. yes, please specify the legal basis of this right [...]
- b. no

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police
- b. questioning by the prosecutor
- c. questioning by the investigating judge
- d. questioning by other officials, please specify [...]

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene
- b. ask questions
- c. make remarks
- d. consult with his client in private
- e. other competences, please specify [...]

024

Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

- a. yes, please specify the legal obligation [...]
- b. no

025

If so, when does the duty to inform the suspect of this right arise for the first time?

- a. promptly after arrest
- b. within [...] hours after arrest
- c. at a given stage of the investigation or the proceedings, please specify [...]

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

027

Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

028

Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

- a. yes, please specify the evidential value of a confession made in the absence of a lawyer [...]
- b. no

029

Is the questioning of the suspect audio recorded?

- a. yes, all questionings are audio recorded
- b. sometimes, please specify which questionings are audio recorded [...]
- c. no

030

If so, how many copies of the audio recording are made?

031

If so, who is entitled to receive a copy of the audio recording?

032

Is the questioning of the suspect video recorded?

- a. yes, all questionings are video recorded
- b. sometimes, please specify which questionings are video recorded [...]
- c. no

033

If so, how many copies of the video recording are made?

034

If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035

Does the suspect have the right to legal assistance (partially) free of charge?

- a. yes, please specify the legal basis of this right [...]
- b. no

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?
More specifically,

036

Is there a merits test⁵?

- a. yes, please specify the merits test [...]
- b. no

037

Is there a means test⁶?

- a. yes, please specify the means test [...]
- b. no

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...]

039

Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

- a. yes, please specify the other legal criteria [...]
- b. no

⁵ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

⁶ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040

Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

- a. yes, please specify the legal basis of this right [...]
- b. no

041

When does the duty to inform the suspect of this right arise?

- a. promptly after arrest
- b. within [...] hours after arrest
- c. at a certain stage of the investigation or the proceedings, please specify [...]

042 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

043

Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

044 *(Check any that apply)*

Who decides on the request for legal assistance?

- a. police
- b. prosecutor
- c. judge
- d. legal aid board
- e. other authority, please specify authority [...]

045

Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

- a. yes, please specify time limit and legal basis [...]
- b. no

046

When a request is denied, is there a legal remedy?

- a. yes, please specify remedy and legal basis [...]
- b. no

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect
- b. specialisation of the lawyer
- c. availability of the lawyer
- d. other factors, please specify [...]

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. prosecutor
- b. judge
- c. lawyer's professional organisation (bar)
- d. legal aid board
- e. other authority, please specify authority [...]

2.3 Financial matters

049

Is providing legal assistance (partially) free of charge remunerated by the state?

- a. yes
- b. no

050

If so, how is remuneration provided

- a. per hour, please specify [...]
- b. per phase of the proceedings, please specify [...]
- c. per case, please specify [...]
- d. in an other way, please specify [...]

051

If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

- a. yes, please specify minimum and/or maximum amounts [...]
- b. no

052

Is the suspect obliged to pay a financial contribution?

- a. yes, please specify obligation [...]
- b. no

053

What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

054

What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

055

What is the size of the population of your country?

2.4 Quality of legal aid

056

Are there any special qualifications for providing legal assistance (partially) free of charge?

a. yes, please specify qualifications [...]

b. no

057

Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

a. yes

b. no

058 *(Check any that apply)*

If so, what kind of quality control exists?

a. supervision by the government/legal aid board

b. supervision by the bar

c. other methods of quality control, please specify [...]

2.5 Legal assistance (partially) free of charge in special circumstances

059

Are there cases of obligatory defence⁷?

a. yes

b. no

060 *(Check any that apply)*

Which circumstances are grounds for obligatory defence?

a. age of the suspect

b. mental capacity of the suspect

c. physical handicaps of the suspect⁸

d. deprivation of liberty of the suspect

e. factual complexity of the case

f. legal complexity of the case

g. severity of the sanction that can be imposed

h. other circumstances, please specify [...]

⁷ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁸ Blindness, deafness et cetera.

061

Are the costs of obligatory defence covered by the state?

- a. yes, always, please specify how [...]
- b. yes, sometimes, please specify how and in which cases [...]
- c. no

062

Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

- a. yes, please specify possibility [...]
- b. no

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063

When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

- a. yes, please specify the legal basis of this right [...]
- b. no

3.1.1 Procedure

064

Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

- a. yes, please specify the established procedure and the relevant criteria [...]
- b. no

065

More specifically, who decides whether translation is necessary?

066

Is translation provided at the state's expense?

- a. yes
- b. partly, please specify [...]
- c. no

067

Are there any standard fees for legal translation of documents?

- a. yes, please specify the standard fees [...]
- b. no

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge
- b. the indictment
- c. the detention order
- d. the reasons for detention
- e. the final judgment
- f. parts of the case file
- g. the letter of rights
- h. other documents, please specify [...]

3.1.3 Information on the right to translation

069

Is there a legal obligation to inform the suspect on his right to translation?

- a. yes, please specify the legal obligation [...]
- b. no

070

When does the duty to inform the suspect of this right arise?

- a. promptly after arrest
- b. within [...] hours after arrest
- c. at a certain stage of the investigation or the proceedings, please specify [...]

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

072

Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

3.2 The right to interpretation

073

When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

- a. yes, please specify the legal basis of this right [...]
- b. no

3.2.1 Procedure

074

Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

- a. yes, please specify the established procedure and the relevant criteria [...]
- b. no

075

More specifically, who decides whether interpretation is necessary?

076

Is interpretation provided at the state's expense?

- a. yes
- b. partly, please specify [...]
- c. no

077

Are there any standard fees for legal interpretation?

- a. yes, please specify the standard fees [...]
- b. no

078

Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

- a. yes, please specify the scheme [...]
- b. no

079

Is there a scheme for emergency linguistic assistance in courts?

- a. yes, please specify the scheme [...]
- b. no

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer
- b. the questioning of the suspect by the police
- c. the trial
- d. other procedural occasions/activities/hearings, please specify [...]

081

Are there any special provisions/arrangements for suspects who are visually impaired?

- a. yes, please specify provisions and/or arrangements [...]
- b. no

082

Are there any special provisions/arrangements for suspects who are hearing impaired?

- a. yes, please specify provisions and/or arrangements [...]
- b. no

3.2.3 Information on the right to interpretation

083

Is there a legal obligation to inform the suspect on his right to interpretation?

- a. yes, please specify the legal obligation [...]
- b. no

084

When does the duty to inform the suspect of this right arise?

- a. promptly after arrest
- b. within [...] hours after arrest
- c. at a certain stage of the investigation or the proceedings, please specify [...]

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

086

Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁹

087

Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

- a. yes, please specify the legal basis of this right [...]
- b. no

088

If so, is there a legal obligation **to inform** the suspect **on his right to be informed** on the charge (nature and cause of the accusation against him)?

- a. yes, please specify the legal obligation [...]
- b. no

089

When does the duty to inform the suspect of this right arise for the first time?

- a. even in situations without arrest, at a given stage of the investigation or the proceedings, please specify [...]
- b. promptly after arrest
- c. within [...] hours after arrest

090 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

091

Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

⁹ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

4.2 Information on access to the file

092

Does the suspect have the right to have access to the file of the criminal investigation?

- a. yes, please specify the legal basis of this right [...]
- b. no

093

If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

- a. yes, please specify the legal obligation [...]
- b. no

094

When does the duty to inform the suspect of this right arise?

- a. even in situations without arrest, at a given stage of the investigation or the proceedings, please specify [...]
- b. promptly after arrest
- c. within [...] hours after arrest

095 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

096

Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment
- b. the detention order
- c. the reasons for detention
- d. the final judgment (sentence)
- e. parts of the case file
- f. other documents, please specify [...]

4.3 Information on the right to remain silent

098

Does the suspect have a right to remain silent during criminal investigations and proceedings?

- a. yes, please specify the legal basis of this right [...]
- b. no

099

If so, is there a legal obligation to inform the suspect on his right to remain silent?

- a. yes, please specify the legal obligation [...]
- b. no

100

When does the duty to inform the suspect of this right arise?

- a. even in situations without arrest, at a given stage of the investigation or the proceedings, please specify [...]
- b. promptly after arrest
- c. within [...] hours after arrest

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

102

Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

4.4 Information on the right to call and examine witnesses/experts

103

Does the suspect have the right to call and examine witnesses?

- a. yes, please specify the legal basis of this right [...]
- b. no

104

If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

- a. yes, please specify the legal obligation [...]
- b. no

105

When does the duty to inform the suspect of this right arise?

- a. even in situations without arrest, at a given stage of the investigation or the proceedings, please specify [...]
- b. promptly after arrest
- c. within [...] hours after arrest

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally
- b. in writing
- c. by a letter of rights

107

Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

- a. yes, please specify the legal obligation [...]
- b. no

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108

The right to legal advice:

- a. yes
- b. partly, please specify [...]
- c. no

109

The right to legal assistance (partially) free of charge:

- a. yes
- b. partly, please specify [...]
- c. no

110

The right to interpretation and the right to translation of documents:

- a. yes
- b. partly, please specify [...]
- c. no

111

The right to information concerning fundamental procedural rights:

- a. yes
- b. partly, please specify [...]
- c. no

111b *(Check any that apply)*

partly, please specify:

- a. information on the charge
- b. information on access to the file
- c. information on the right to remain silent
- d. information on the right to call/examine witnesses and experts

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112

The right to legal advice:

- a. yes
- b. partly, please specify [...]
- c. no

113

The right to legal assistance (partially) free of charge:

- a. yes
- b. partly, please specify [...]
- c. no

114

The right to interpretation and the right to translation of documents:

- a. yes
- b. partly, please specify [...]
- c. no

115

The right to information concerning fundamental procedural rights:

- a. yes
- b. partly, please specify [...]
- c. no

115b *(Check any that apply)*

partly, please specify:

- a. information on the charge
- b. information on access to the file
- c. information on the right to remain silent
- d. information on the right to call/examine witnesses and experts

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116

The right to legal advice:

- a. yes
- b. partly, please specify [...]
- c. no

117

The right to legal assistance (partially) free of charge:

- a. yes
- b. partly, please specify [...]
- c. no

118

The right to interpretation and the right to translation of documents:

- a. yes
- b. partly, please specify [...]
- c. no

119

The right to information concerning fundamental procedural rights:

- a. yes
- b. partly, please specify [...]
- c. no

119b *(Check any that apply)*

partly, please specify:

- a. information on the charge
- b. information on access to the file
- c. information on the right to remain silent
- d. information on the right to call/examine witnesses and experts

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120

The right to legal advice:

- a. yes
- b. partly, please specify [...]
- c. no

121

The right to legal assistance (partially) free of charge:

- a. yes
- b. partly, please specify [...]
- c. no

122

The right to interpretation and the right to translation of documents:

- a. yes
- b. partly, please specify [...]
- c. no

123

The right to information concerning fundamental procedural rights:

- a. yes
- b. partly, please specify [...]
- c. no

123b *(Check any that apply)*

partly, please specify:

- a. information on the charge
- b. information on access to the file
- c. information on the right to remain silent
- d. information on the right to call/examine witnesses and experts

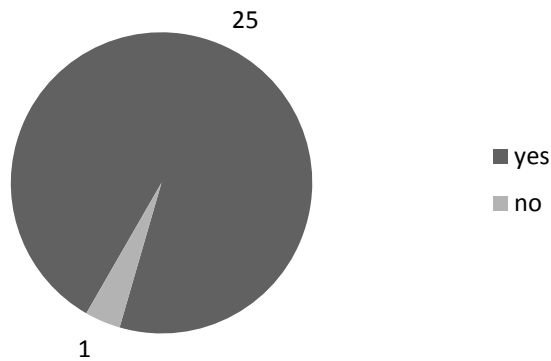
== End of Questionnaire Procedural Rights – 2008 Update ==

ANNEX 2

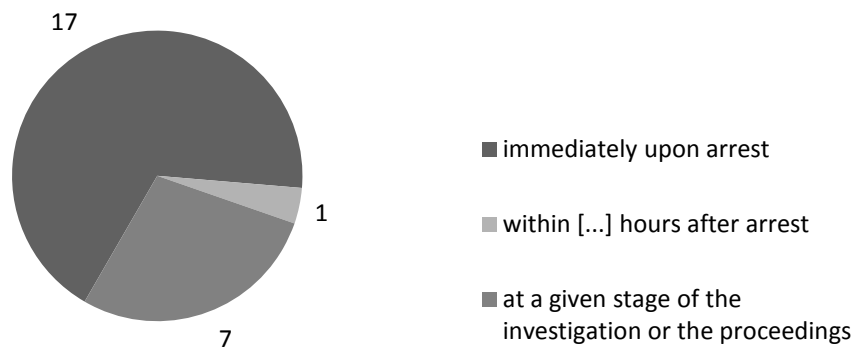
EU PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

Complete overview of diagrams

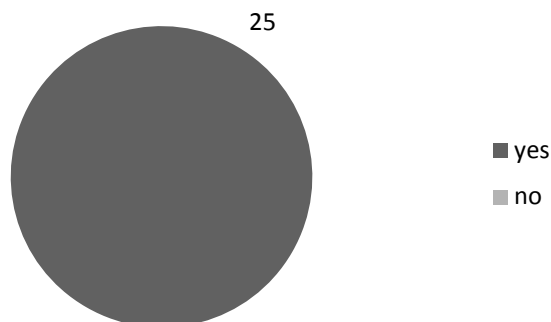
1. Does a person have the right to contact a lawyer (legal representative) after his arrest?



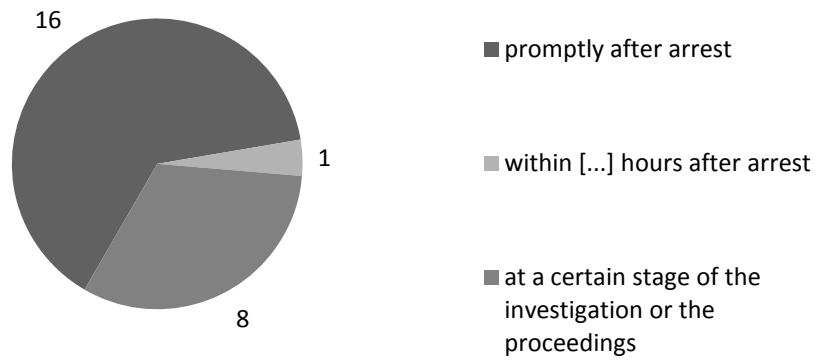
2. If so, when can this right be effected:



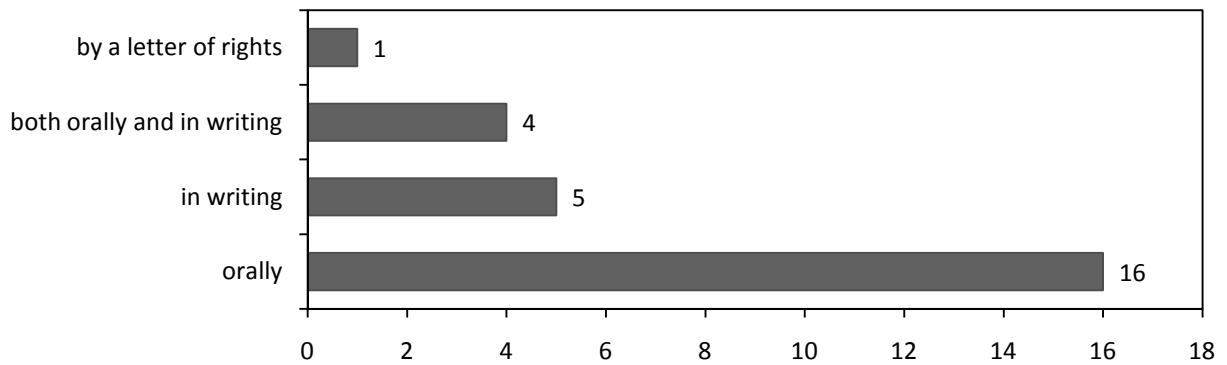
3. If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?



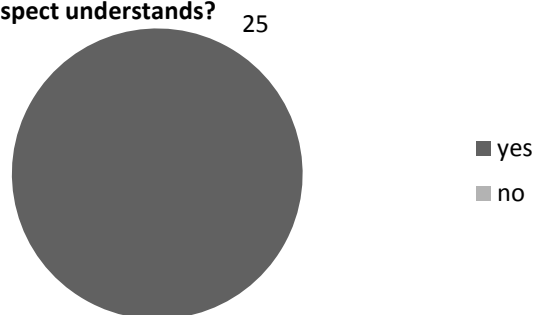
4. If so, when does the duty to inform the suspect of this right arise?



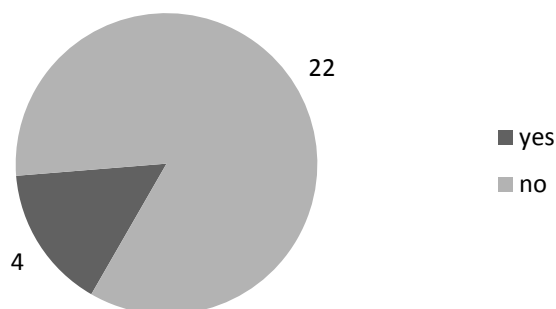
5. If so, how should the suspect be informed of this right? (more than one answer possible)



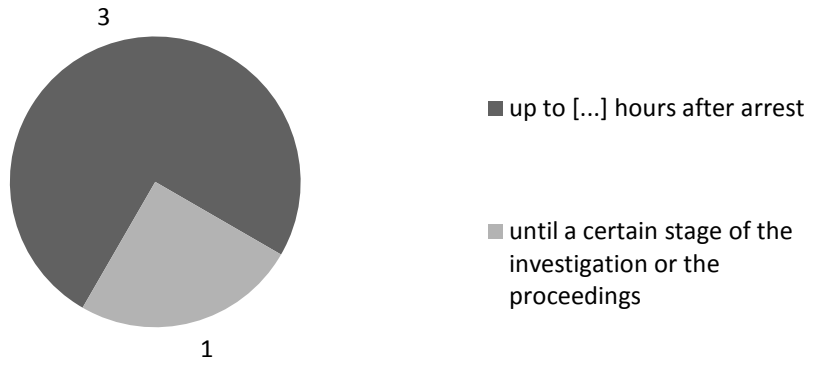
6. Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?



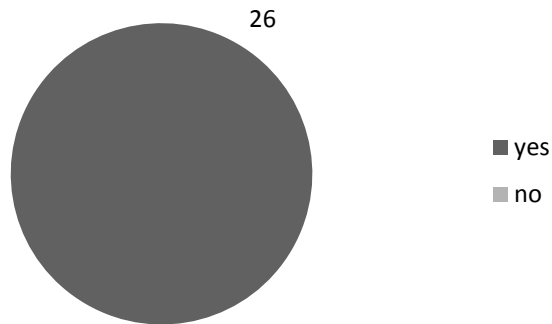
7. Are there (legal) possibilities to limit the right to contact a lawyer after arrest?



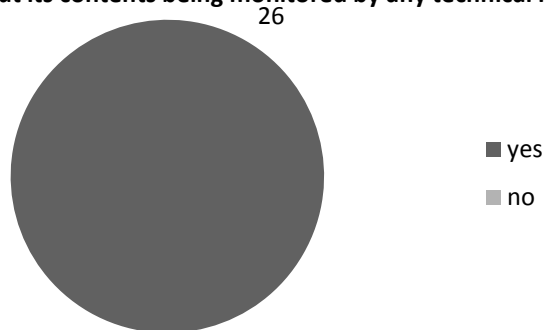
9. If so, please specify for which period of time?



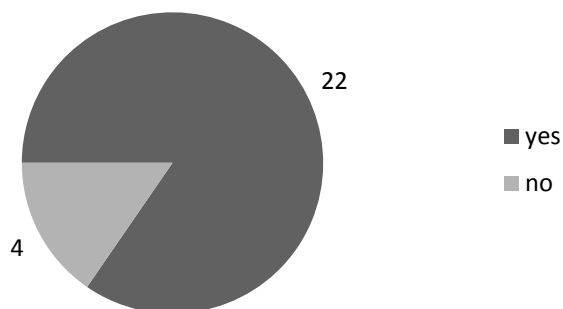
10. Does the suspect have the right to legal assistance of his own choosing?



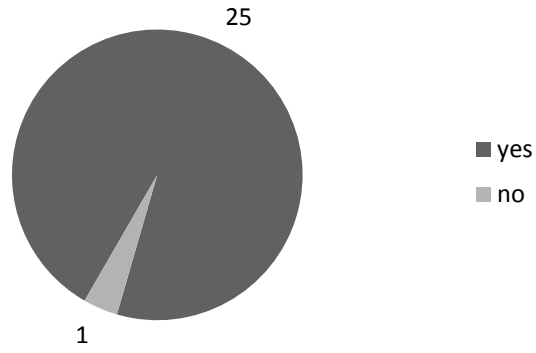
11. Is it guaranteed that consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?



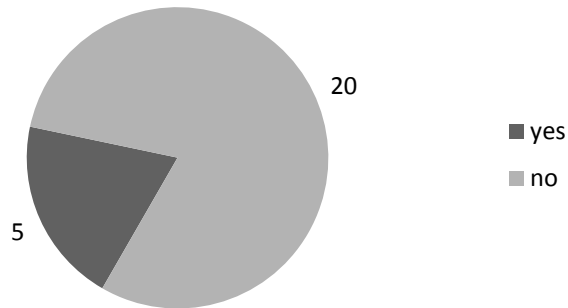
12. Is it guaranteed that consultation (in person or by telephone) is possible before questioning by the police?



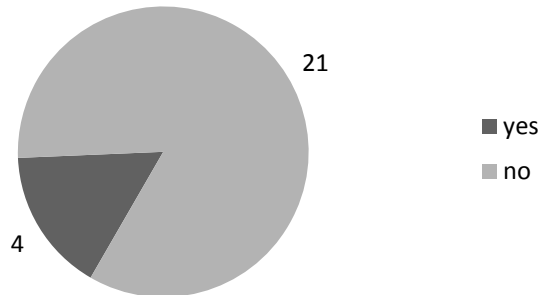
13. Can the lawyer visit his client held at the police station?



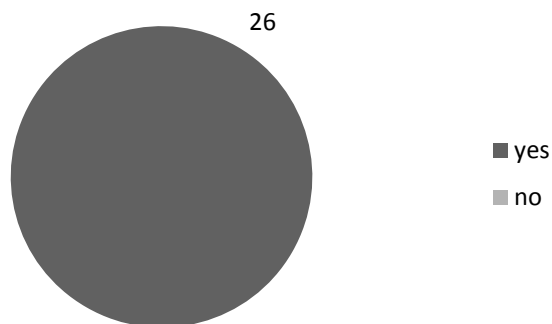
14. If so, does the lawyer need permission to visit his client held at the police station?



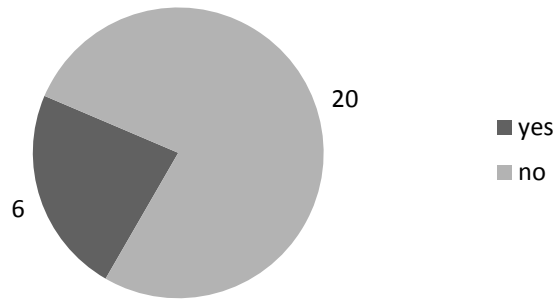
15. If so, are lawyer-client visits at the police station limited in time and/or frequency?



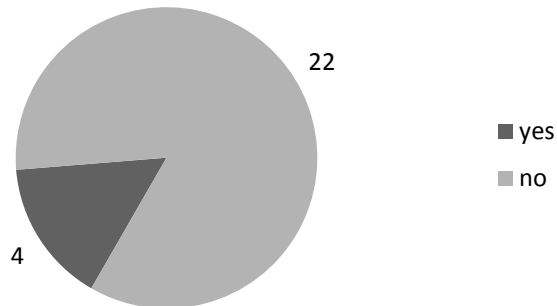
16. Can the lawyer visit his client detained in prison?



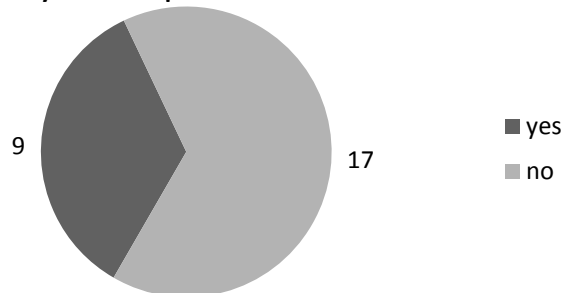
17. If so, does the lawyer need permission to visit his client detained in prison?



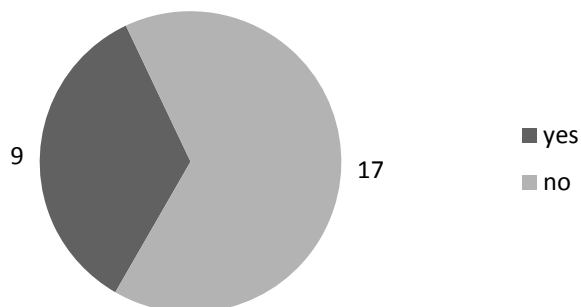
18. If so, are lawyer-client visits in prison limited in time and/or frequency?



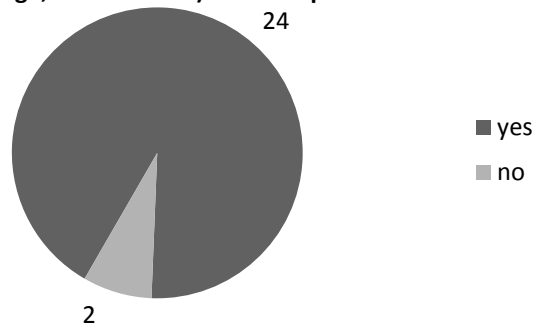
19. Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?



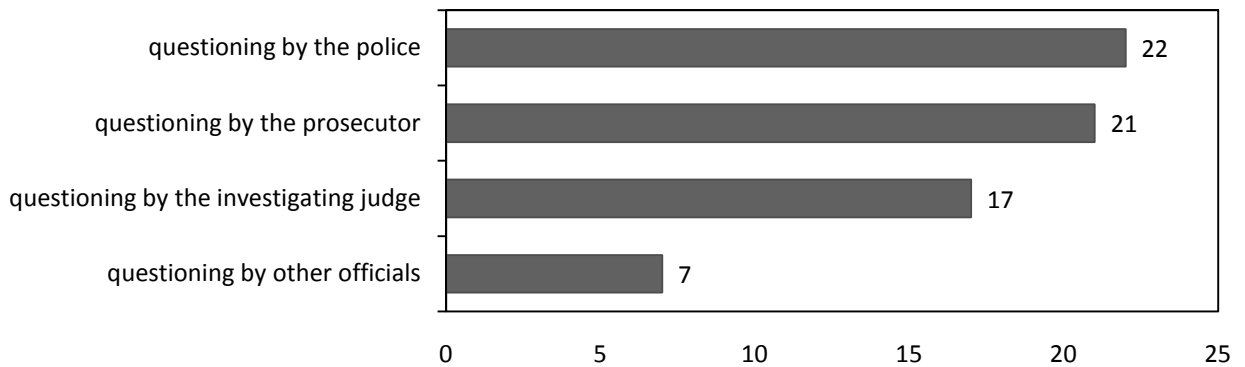
20. Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?



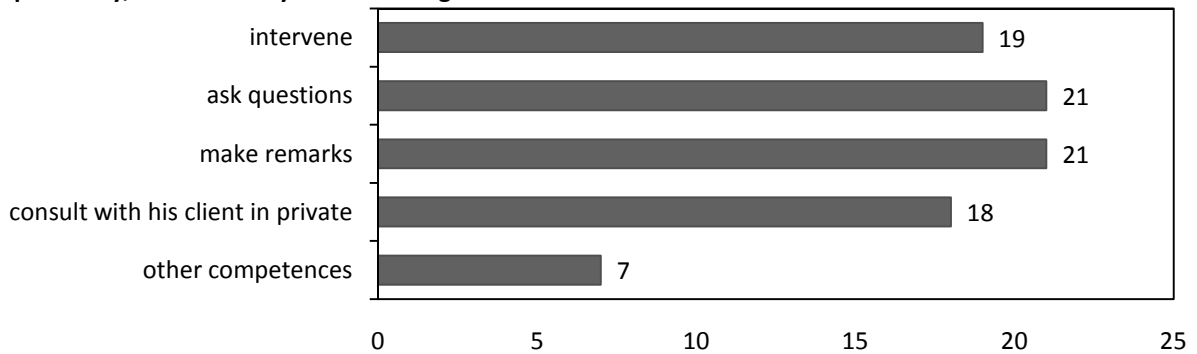
21. Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?



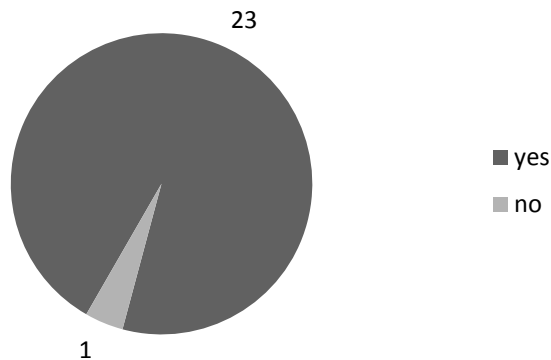
22. If so, does this right cover:



23. If so, what are the competences of the lawyer during questioning? More specifically, does the lawyer have the right to:



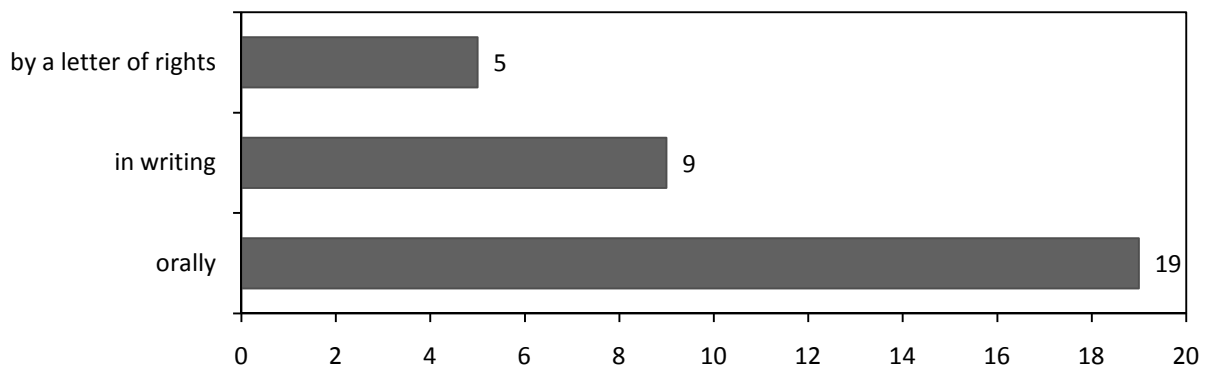
24. Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?



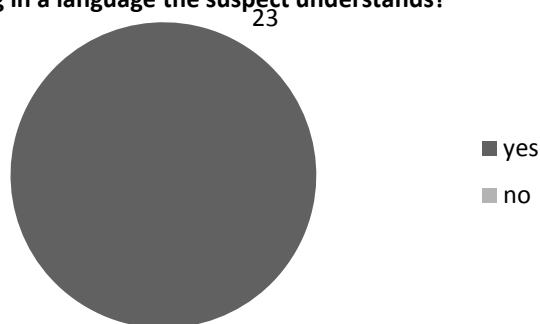
25. If so, when does the duty to inform the suspect of this right arise for the first time?



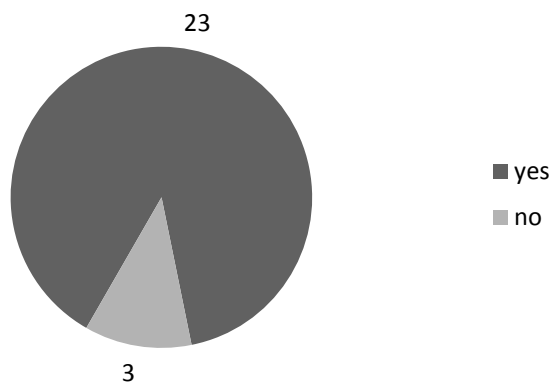
26. If so, how should the suspect be informed of this right?



27. Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

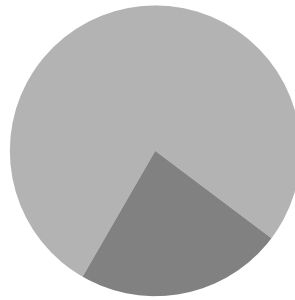


28. Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?



29. Is the questioning of the suspect audio recorded?

20



■ yes, all questionings are audio recorded

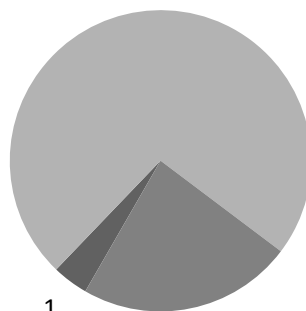
■ sometimes

■ no

6

32. Is the questioning of the suspect video recorded?

19



■ yes, all questionings are video recorded

■ sometimes

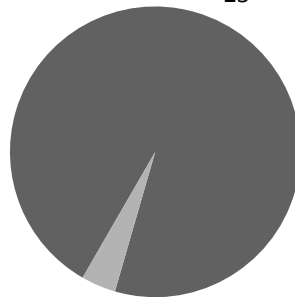
■ no

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6

35. Does the suspect have the right to legal assistance (partially) free of charge?

25



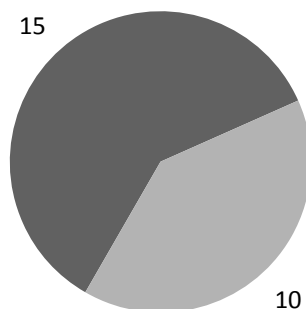
■ yes

■ no

1

36. Is there a merits test?

15

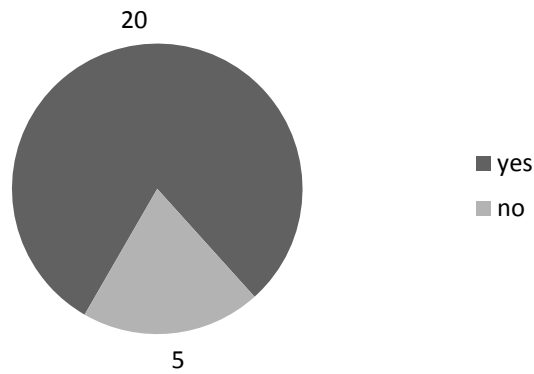


■ yes

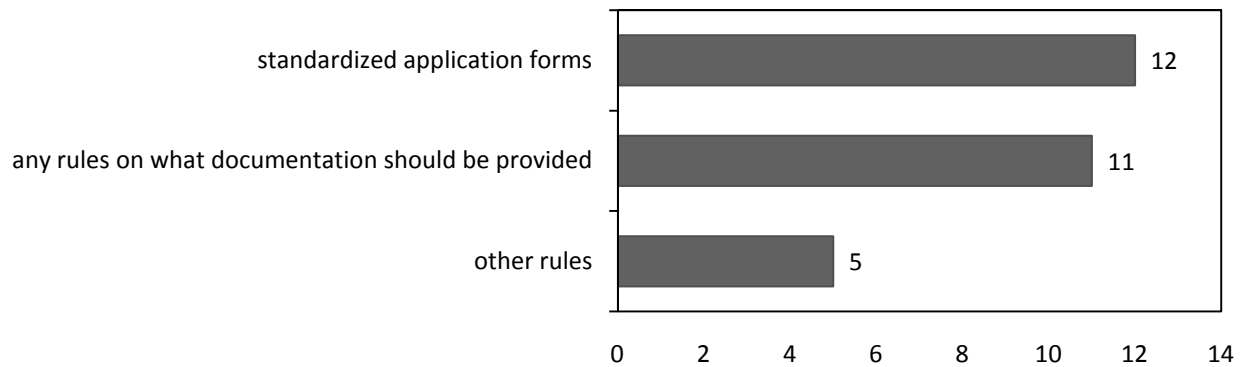
■ no

10

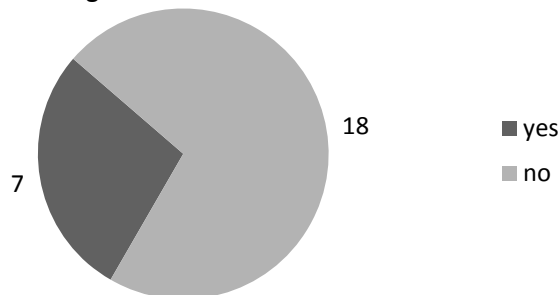
37. Is there a means test?



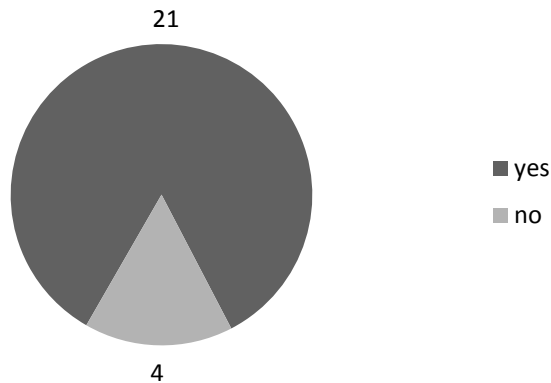
38. If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself? More specifically, are there:



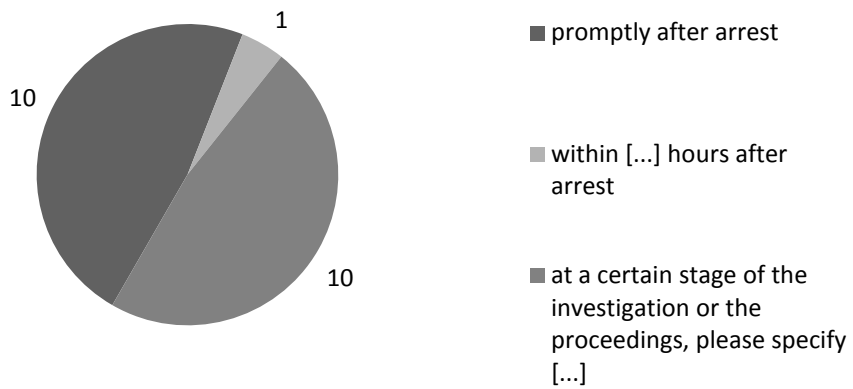
39. Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?



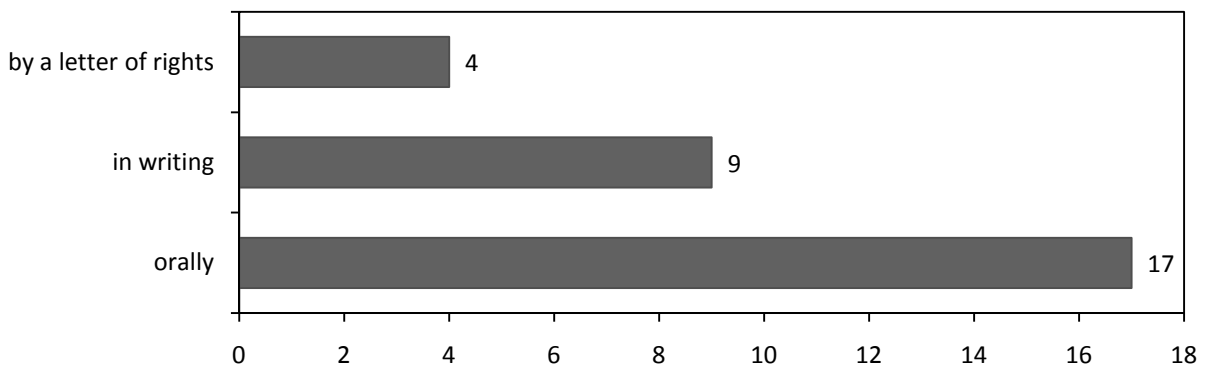
40. Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?



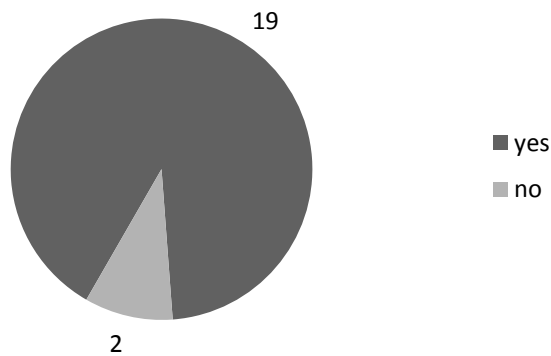
41. When does the duty to inform the suspect of this right arise?



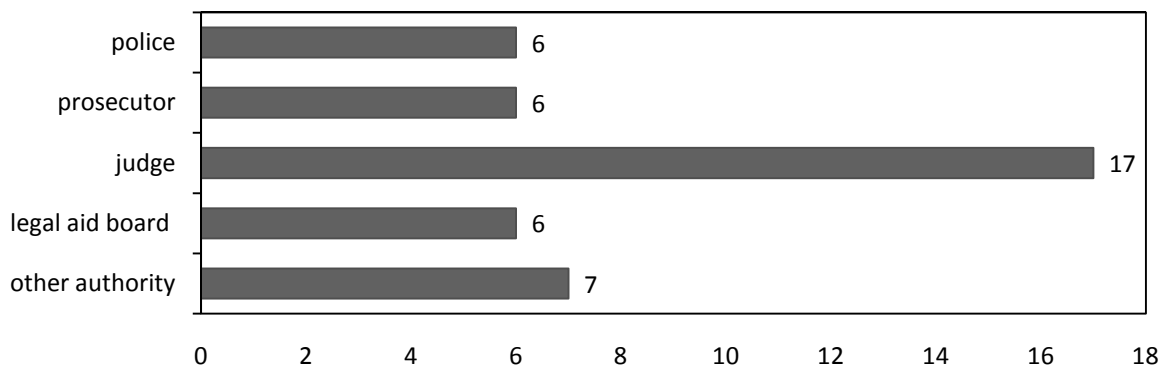
42. How should the suspect be informed of this right?



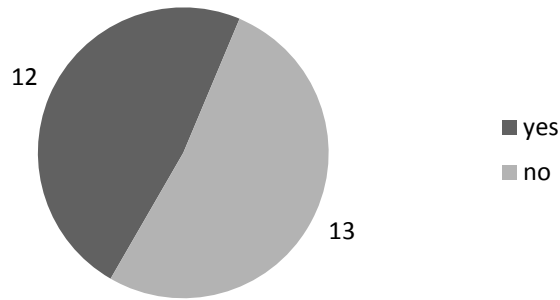
43. Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?



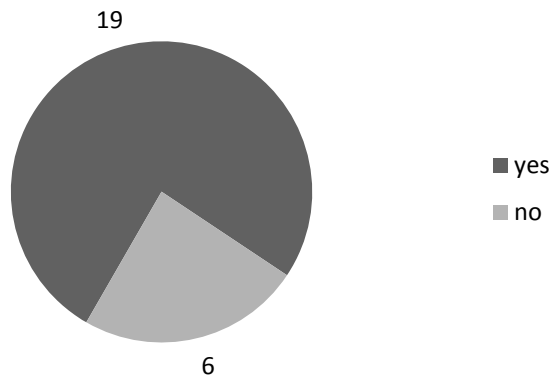
44. Who decides on the request for legal assistance?



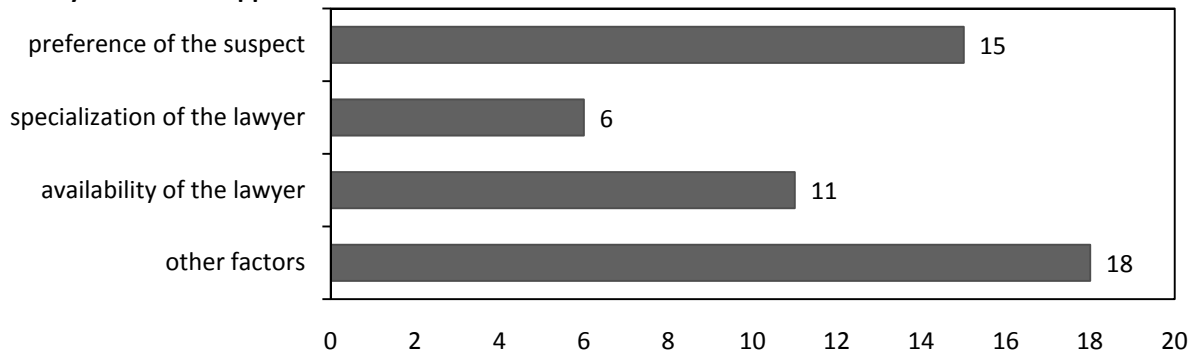
45. Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?



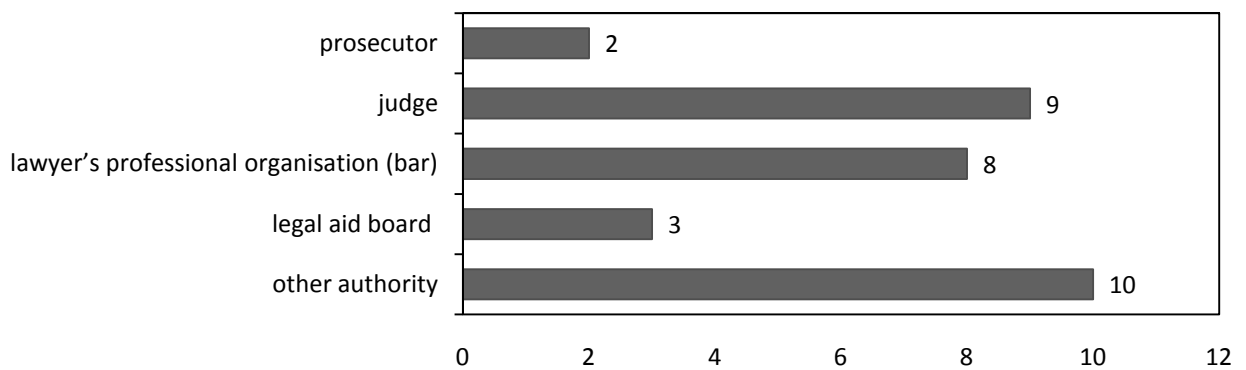
46. When a request is denied, is there a legal remedy?



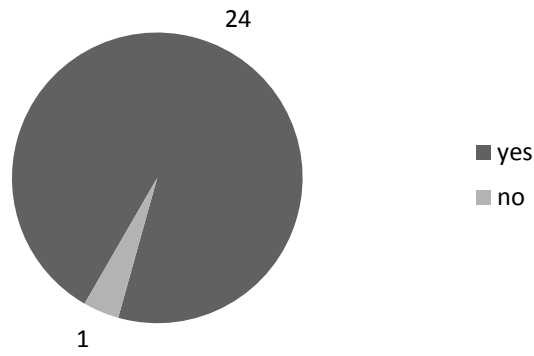
47. When a request is approved, what factors are taken into account to decide which lawyer should be appointed?



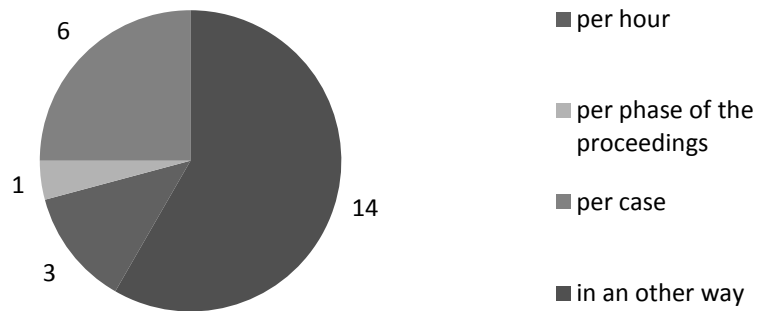
48. When a request is approved, who decides which lawyer should be appointed?



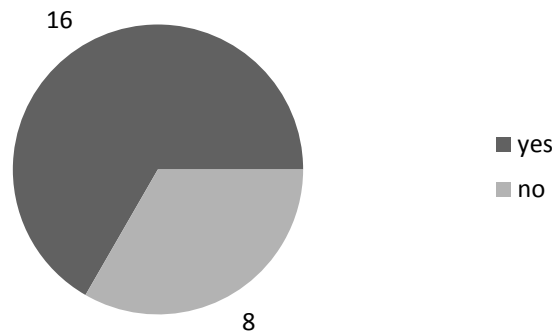
49. Is providing legal assistance (partially) free of charge remunerated by the state?



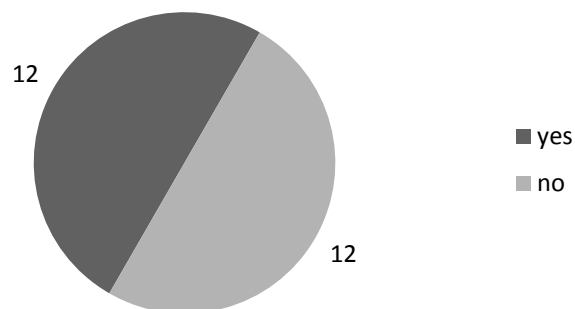
50. If so, how is remuneration provided



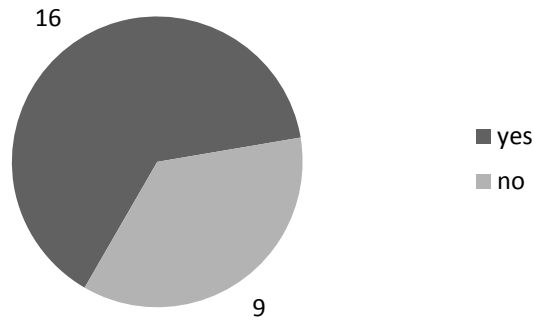
51. If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?



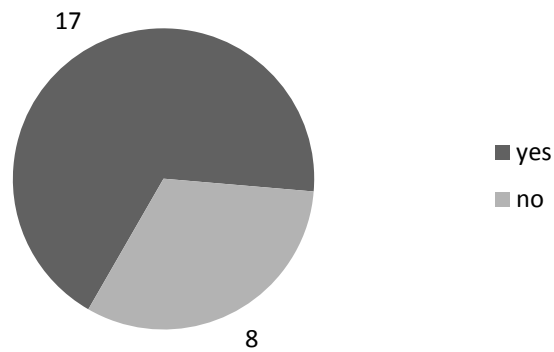
52. Is the suspect obliged to pay a financial contribution?



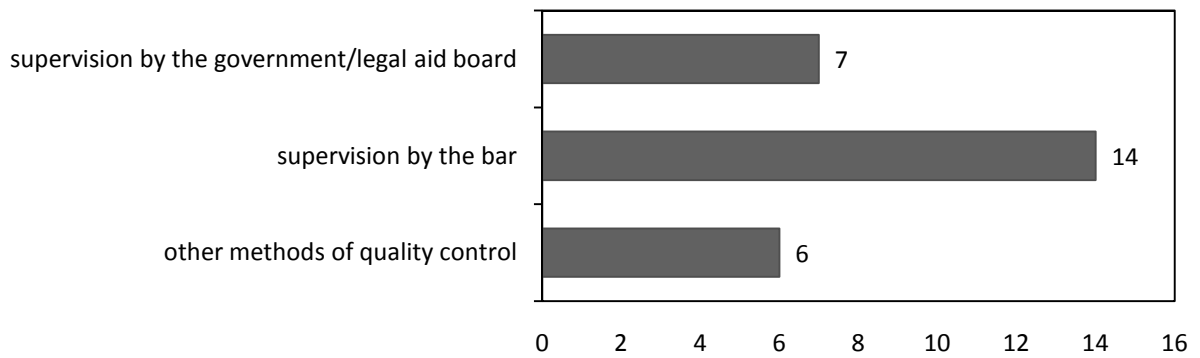
56. Are there any special qualifications for providing legal assistance (partially) free of charge?



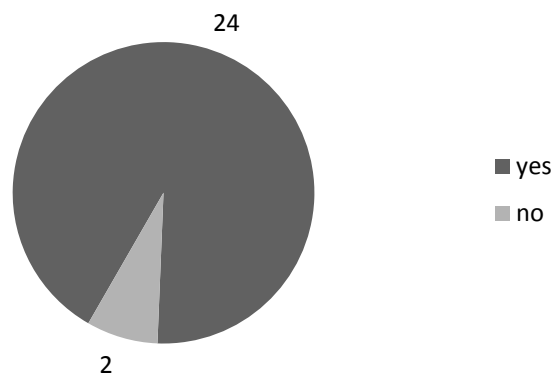
57. Are there any mechanisms to control the quality of legal assistance (partially) free of charge?



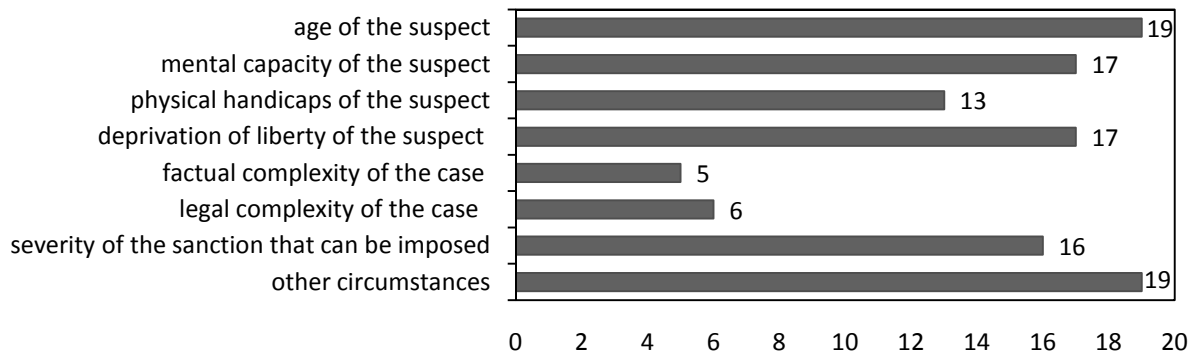
58. If so, what kind of quality control exists?



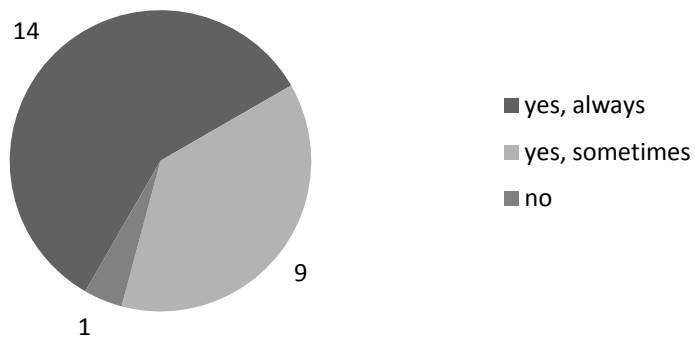
59. Are there cases of obligatory defence?



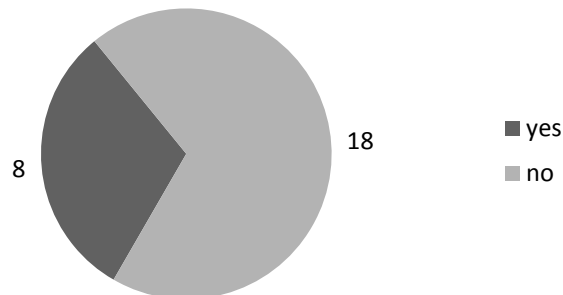
60. Which circumstances are grounds for obligatory defence?



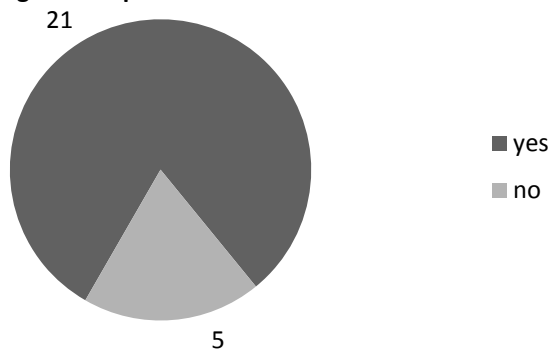
61. Are the costs of obligatory defence covered by the state?



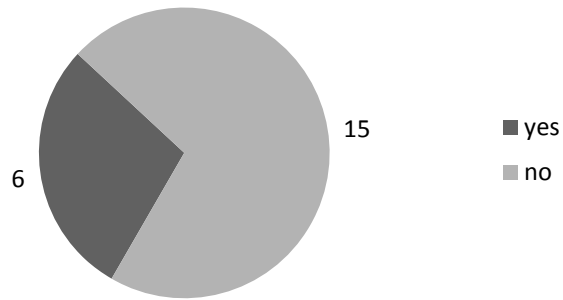
62. Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?



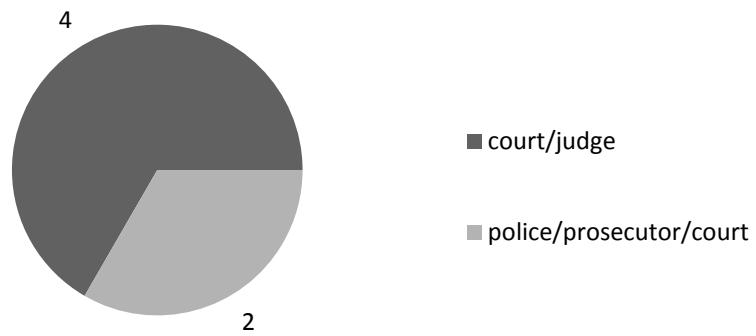
63. When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?



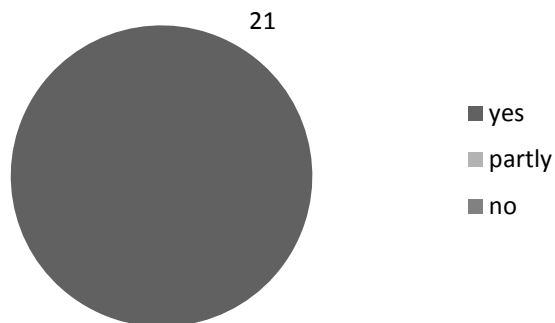
64. Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?



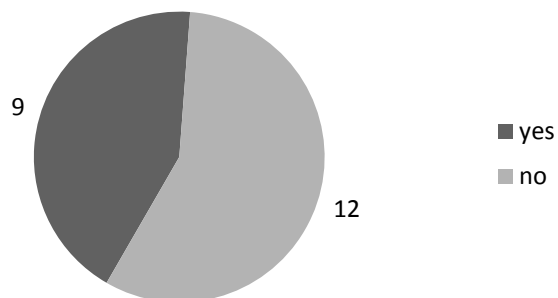
65. More specifically, who decides whether translation is necessary?



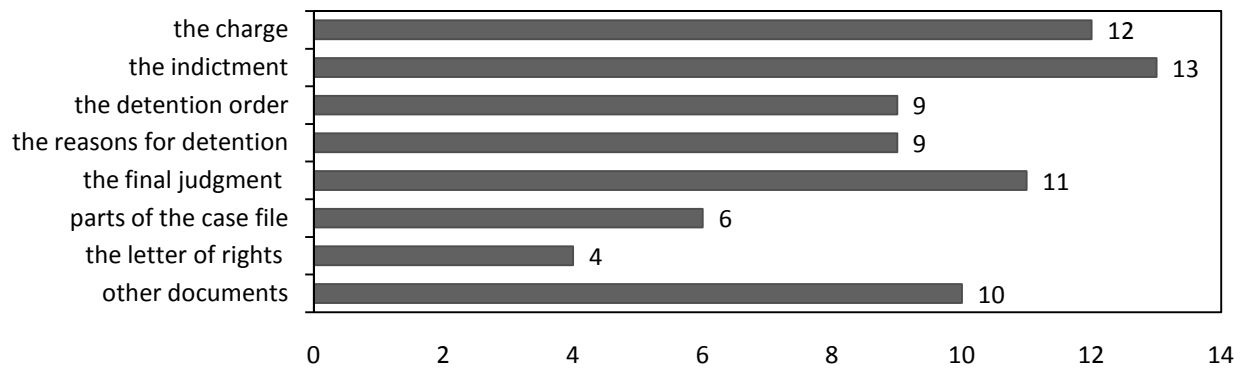
66. Is translation provided at the state's expense?



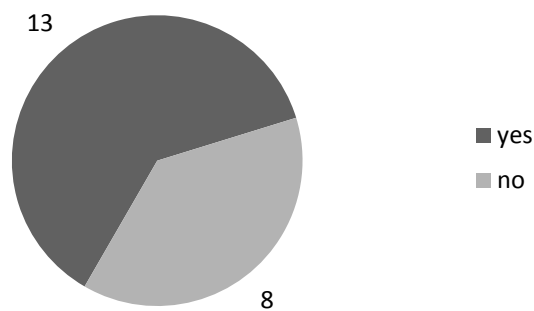
67. Are there any standard fees for legal translation of documents?



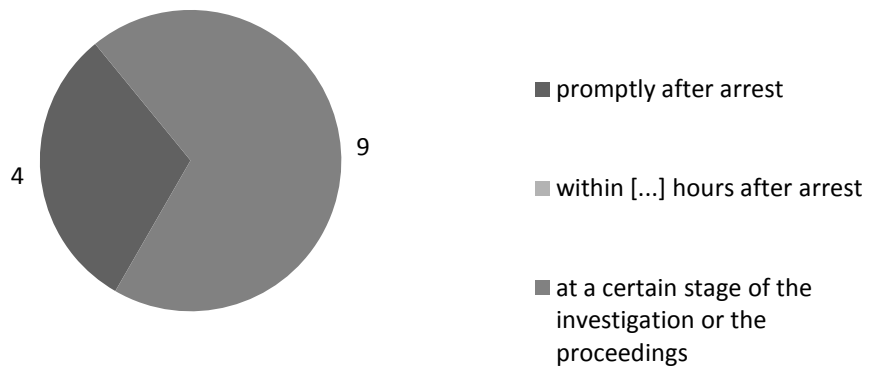
68. Does the suspect have the right to be provided with a written translation of:



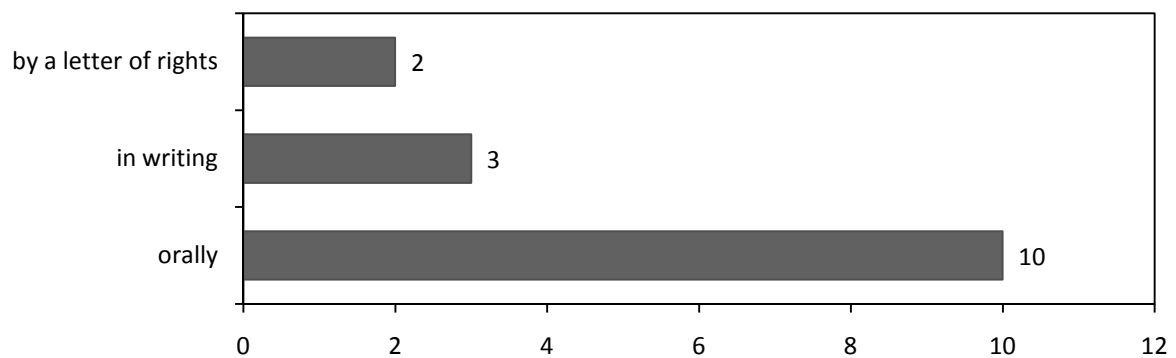
69. Is there a legal obligation to inform the suspect on his right to translation?



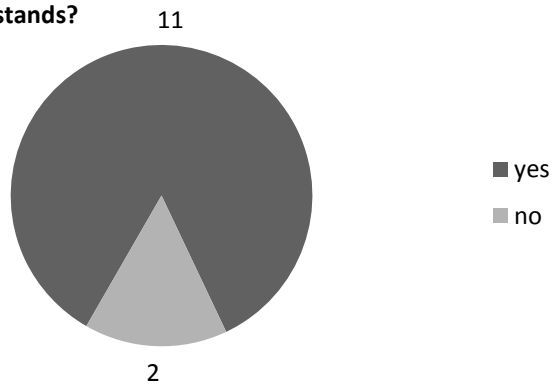
70. When does the duty to inform the suspect of this right arise?



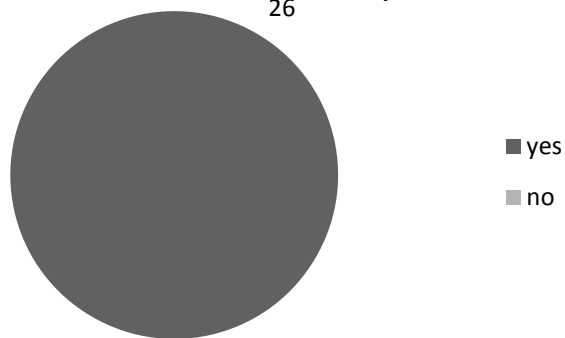
71. How should the suspect be informed of this right?



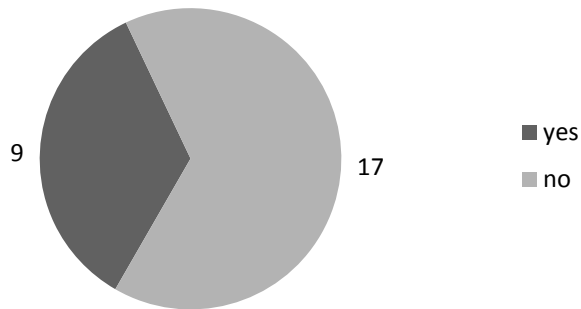
72. Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?



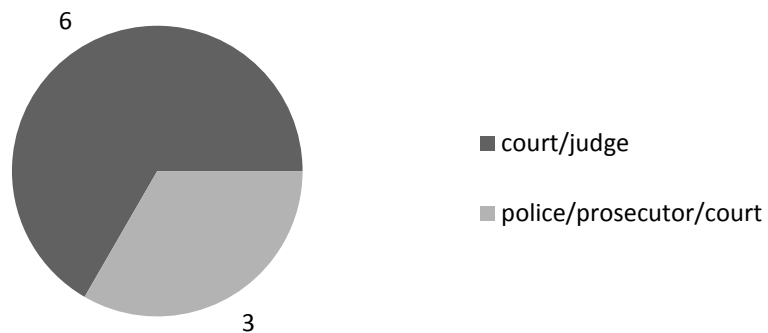
73. When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?



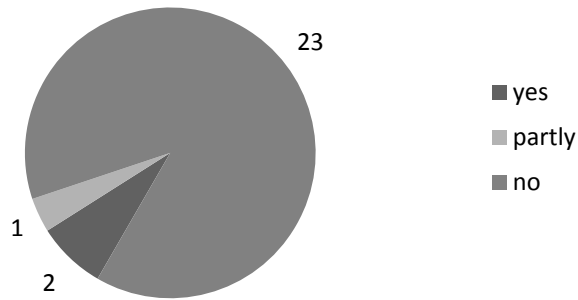
74. Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?



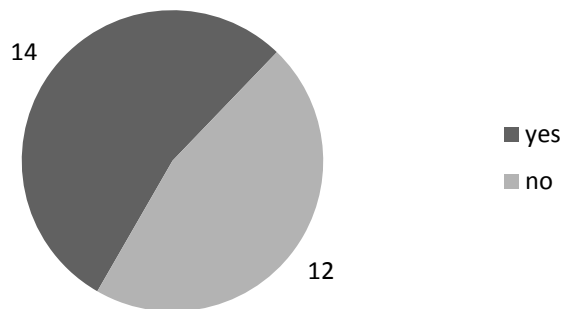
75. More specifically, who decides whether interpretation is necessary?



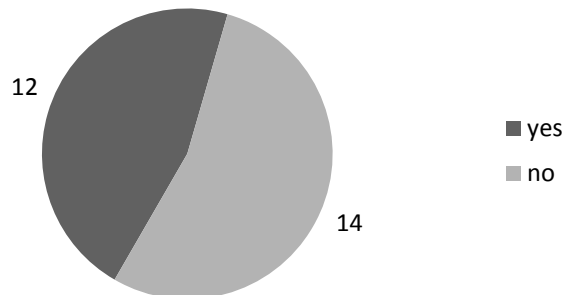
76. Is interpretation provided at the state's expense?



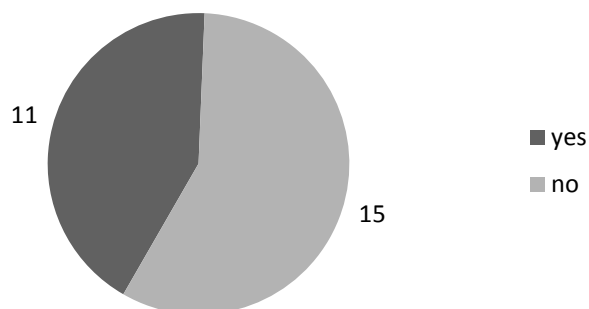
77. Are there any standard fees for legal interpretation?



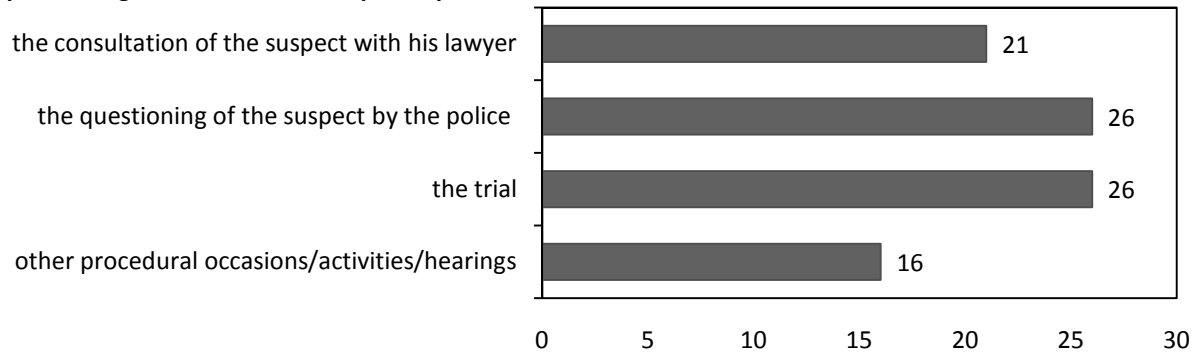
78. Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?



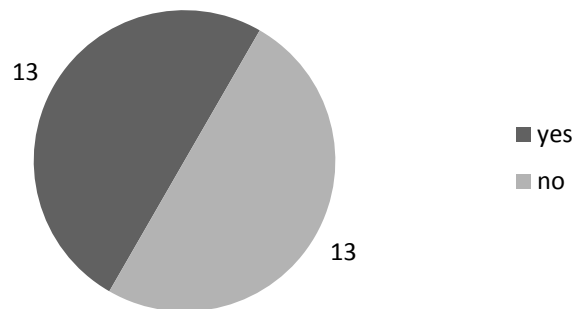
79. Is there a scheme for emergency linguistic assistance in courts?



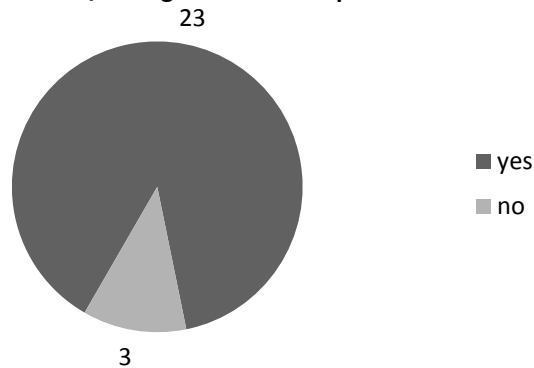
80. When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:



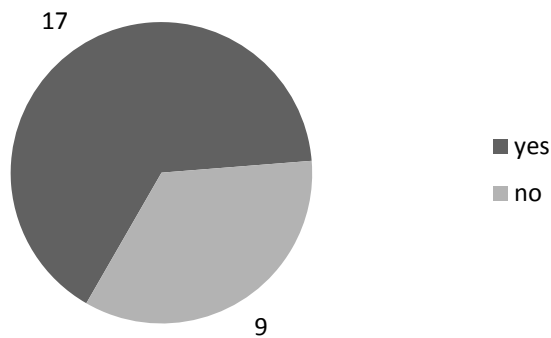
81. Are there any special provisions/arrangements for suspects who are visually impaired?



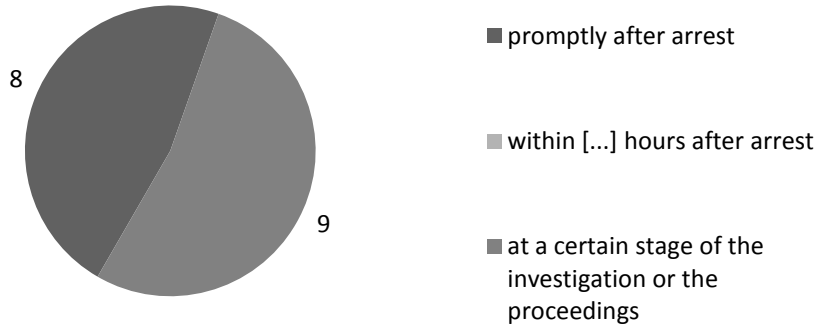
82. Are there any special provisions/arrangements for suspects who are hearing impaired?



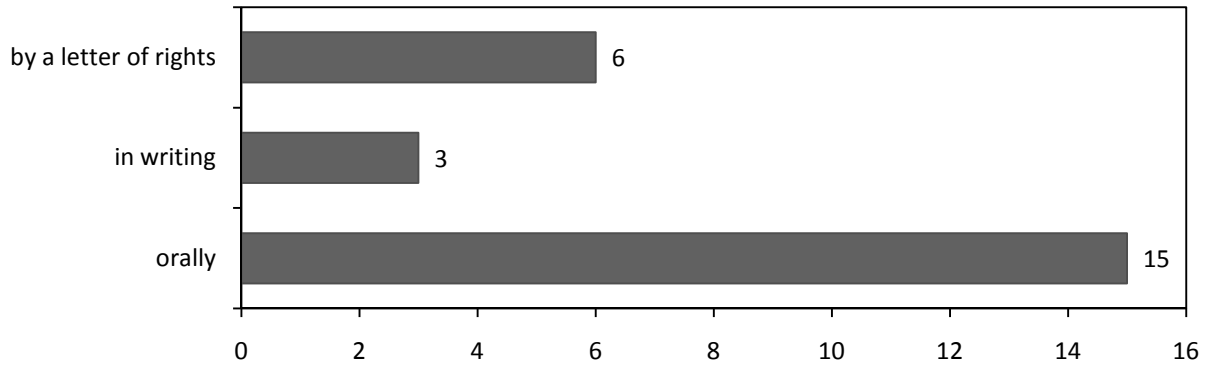
83. Is there a legal obligation to inform the suspect on his right to interpretation?



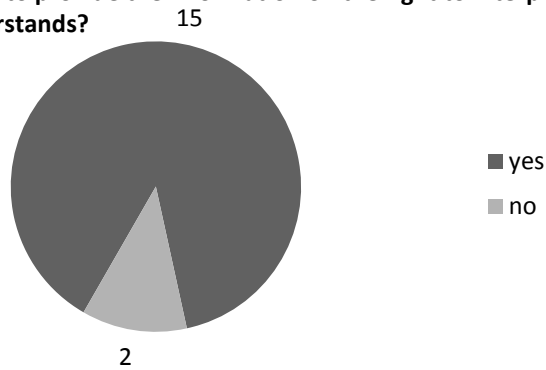
84. When does the duty to inform the suspect of this right arise?



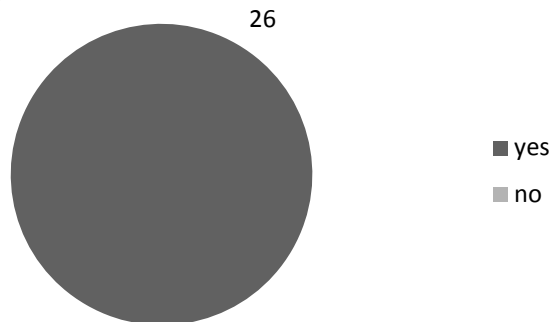
85. How should the suspect be informed of this right?



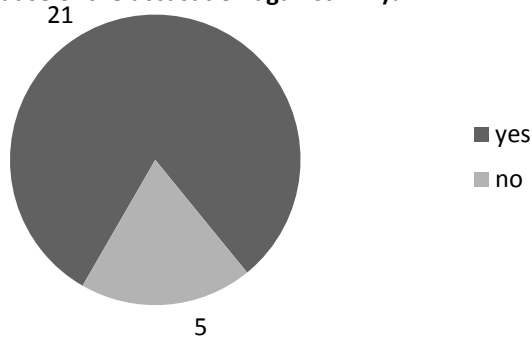
86. Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?



87. Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?



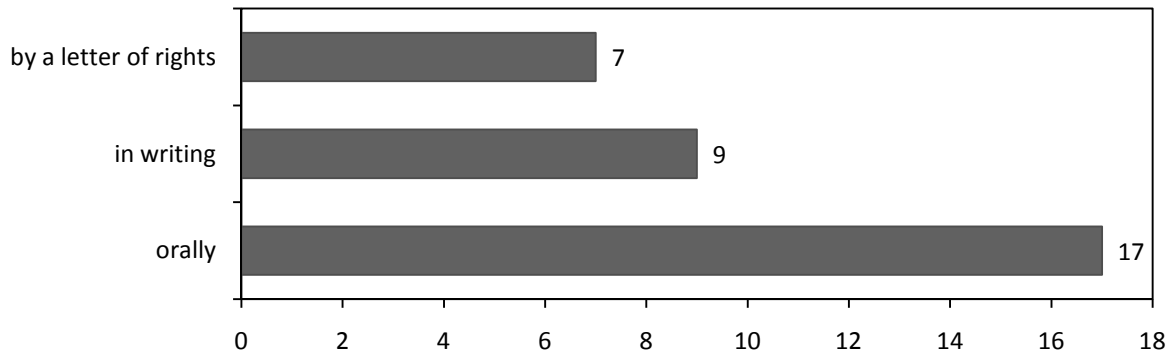
88. If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?



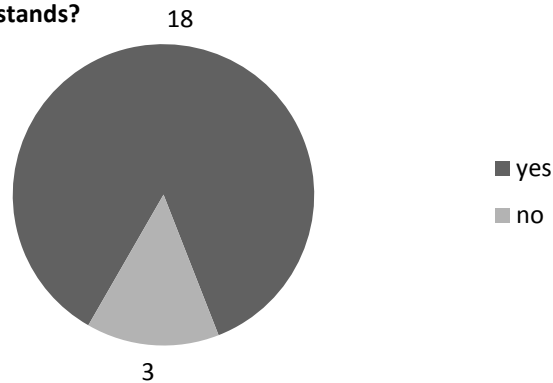
89. When does the duty to inform the suspect of this right arise for the first time?



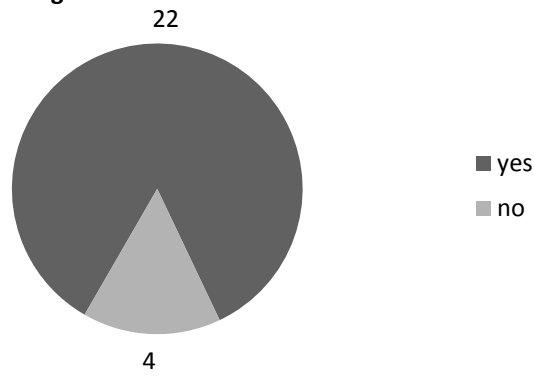
90. How should the suspect be informed of this right?



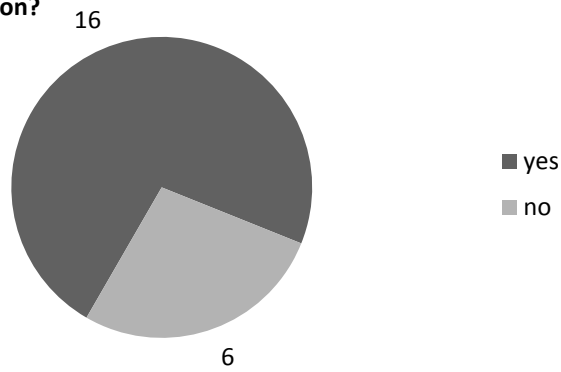
91. Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?



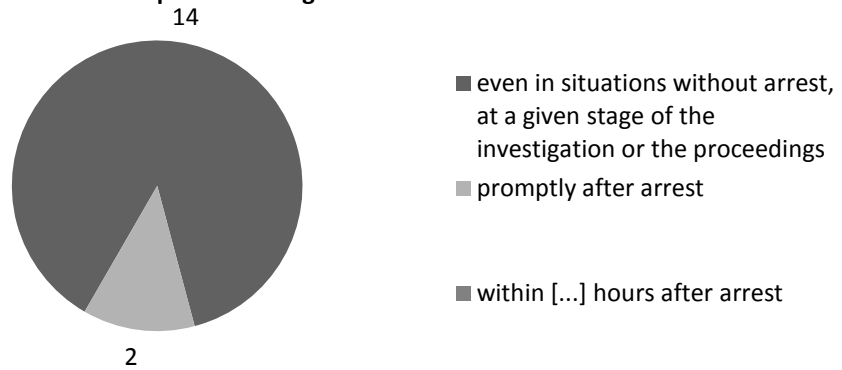
92. Does the suspect have the right to have access to the file of the criminal investigation?



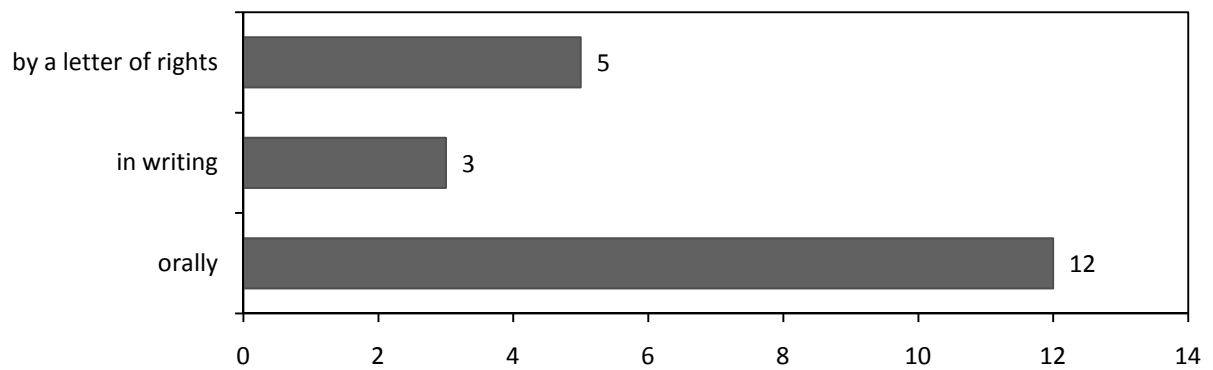
93. If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?



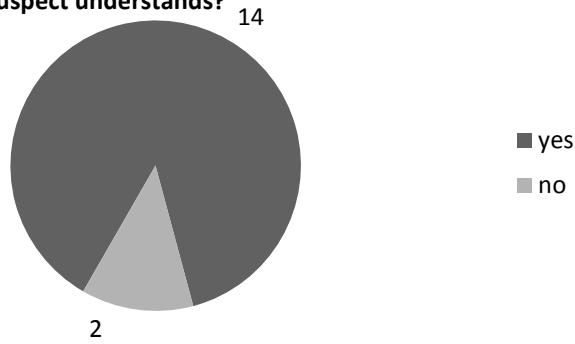
94. When does the duty to inform the suspect of this right arise?



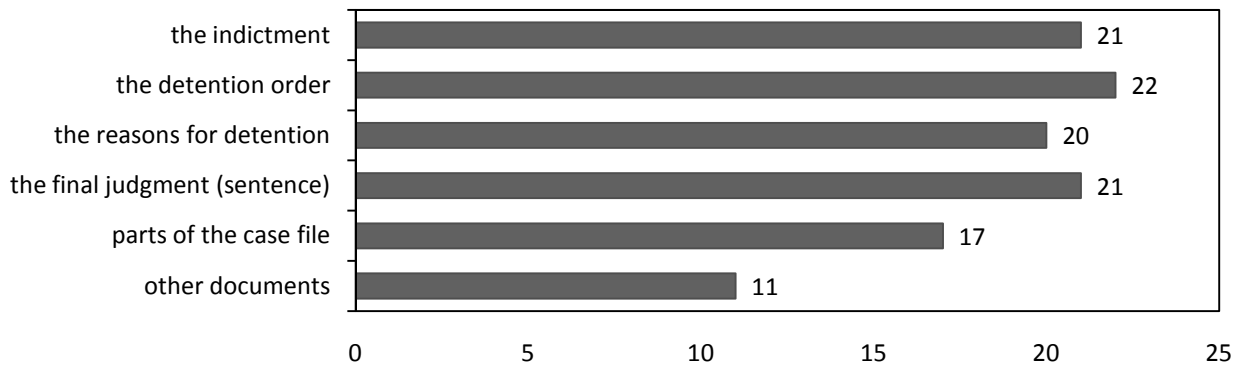
95. How should the suspect be informed of this right?



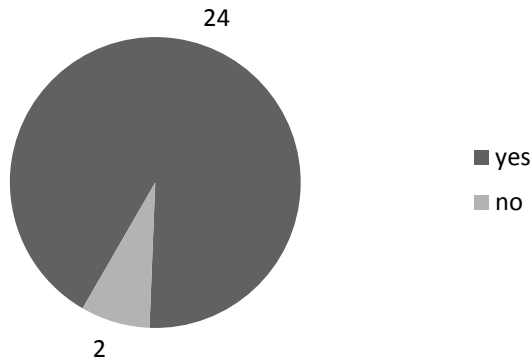
96. Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?



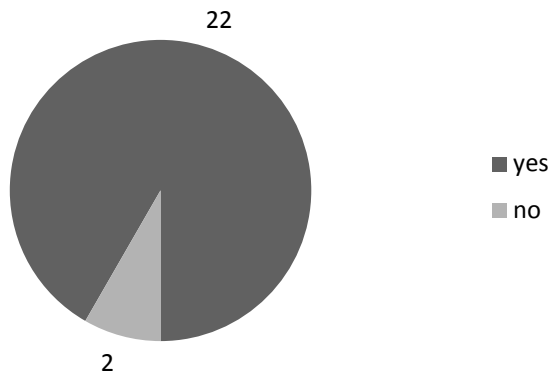
97. More specifically, does the suspect have the right to be provided with a written version of:



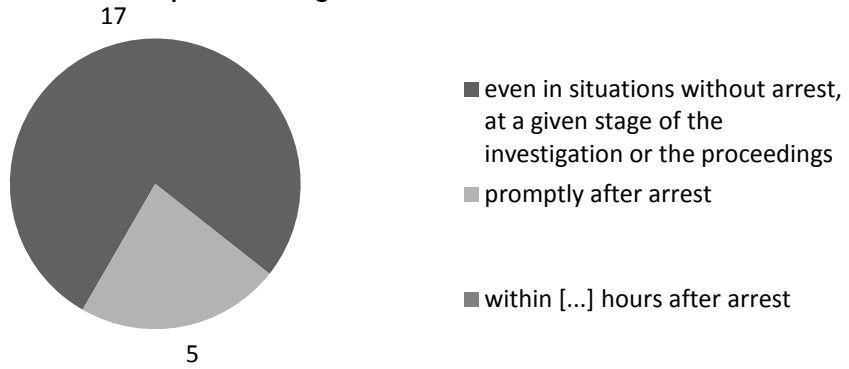
98. Does the suspect have a right to remain silent during criminal investigations and proceedings?



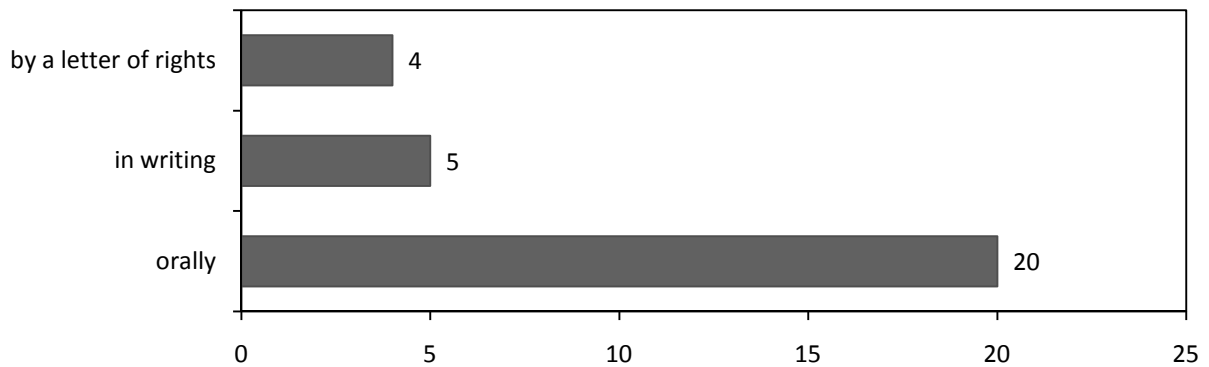
99. If so, is there a legal obligation to inform the suspect on his right to remain silent?



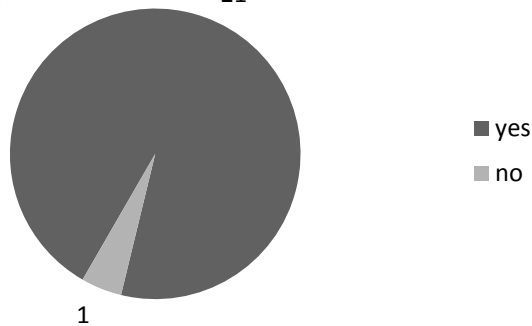
100. When does the duty to inform the suspect of this right arise?



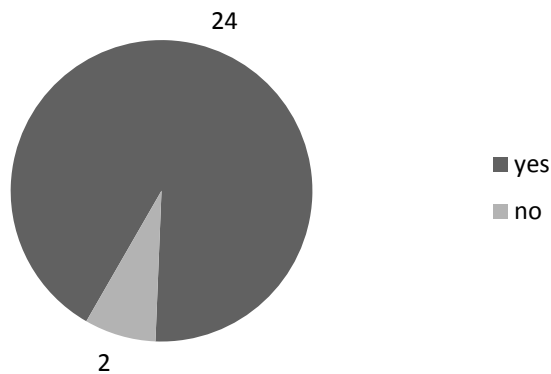
101. How should the suspect be informed of this right?



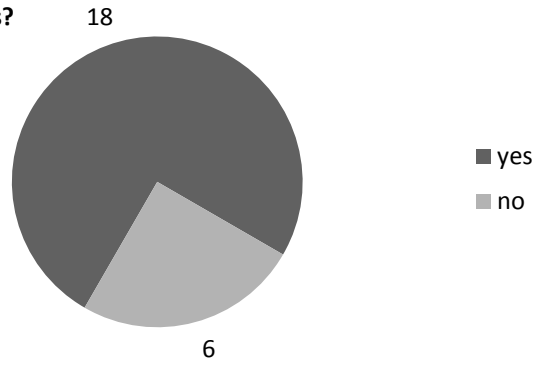
102. Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands? 21



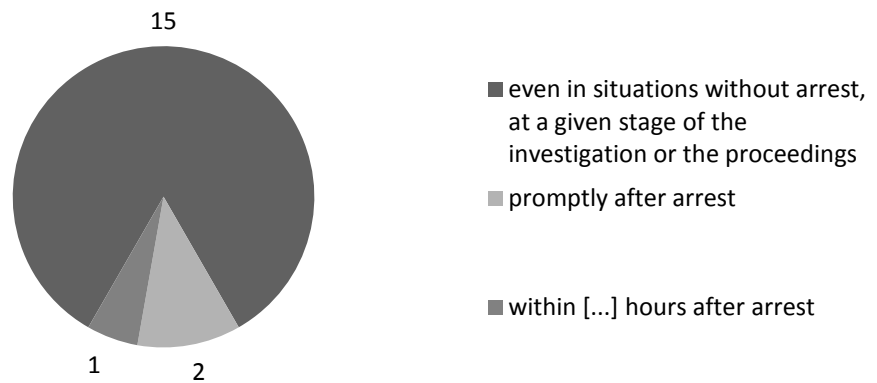
103. Does the suspect have the right to call and examine witnesses? 24



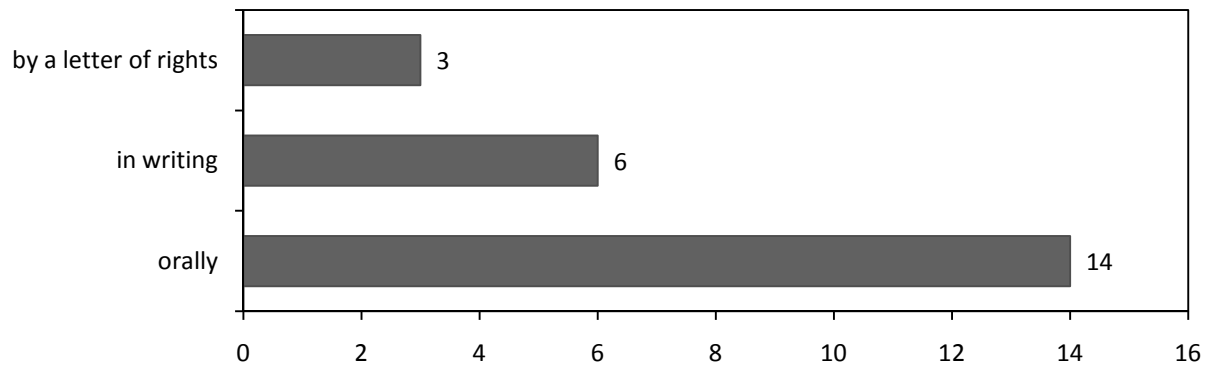
104. If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?



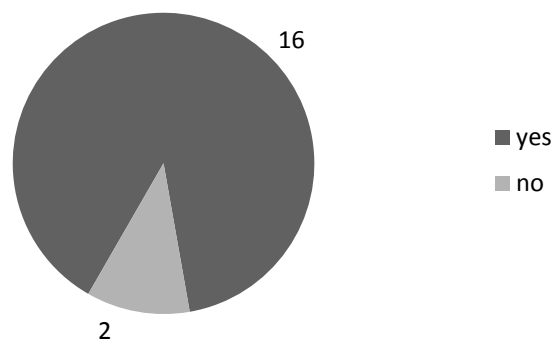
105. When does the duty to inform the suspect of this right arise?



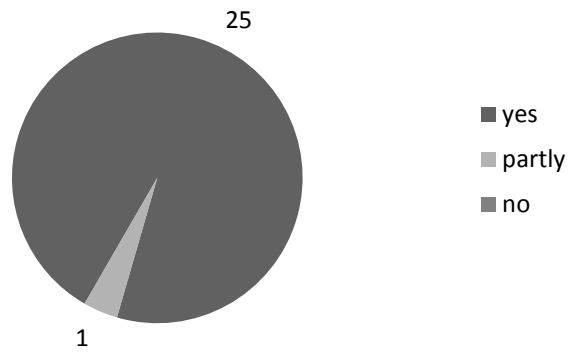
106. How should the suspect be informed of this right?



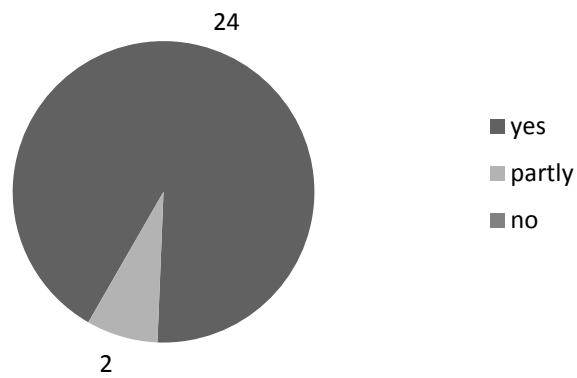
107. Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?



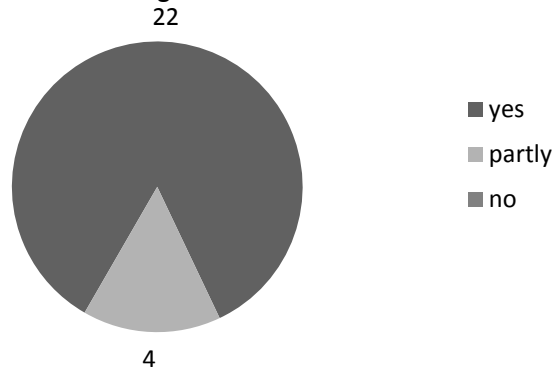
108. The right to legal advice:



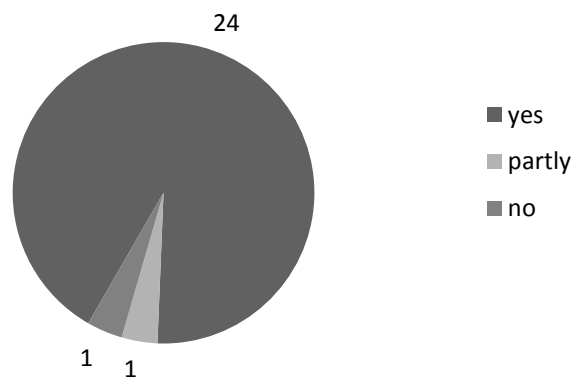
109. The right to legal assistance (partially) free of charge:



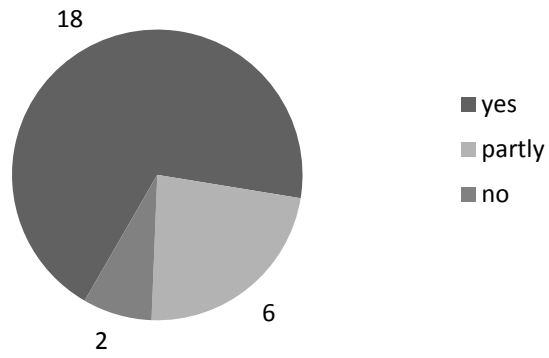
110. The right to interpretation and the right to translation of documents:



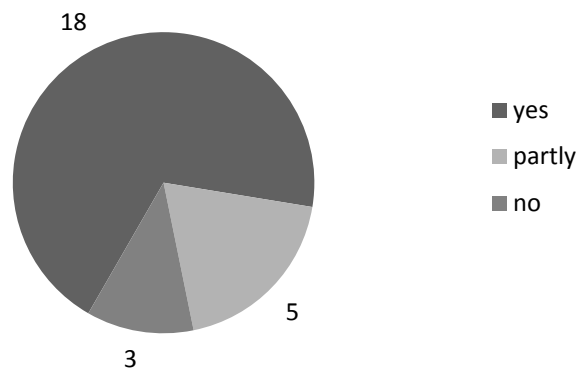
111. The right to information concerning fundamental procedural rights:



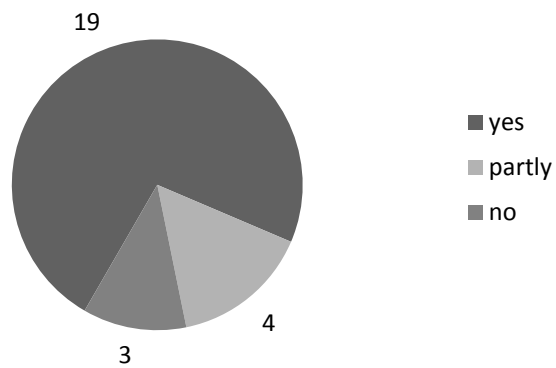
112. The right to legal advice:



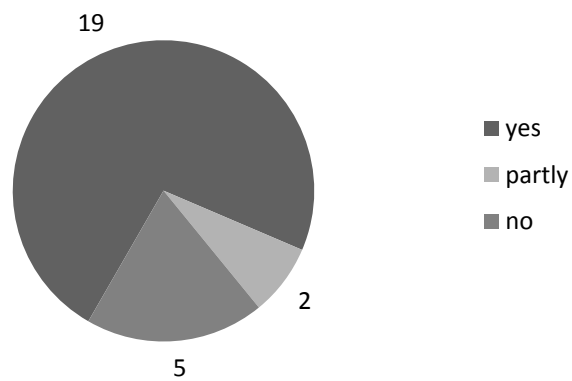
113. The right to legal assistance (partially) free of charge:



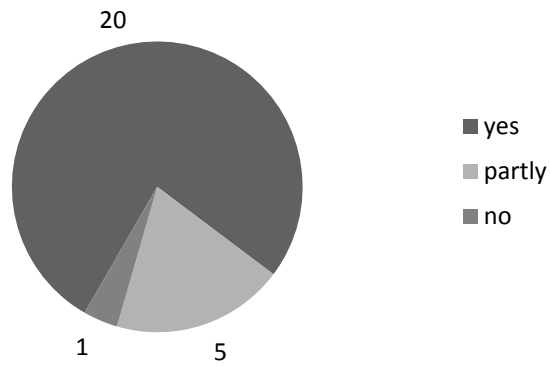
114. The right to interpretation and the right to translation of documents:



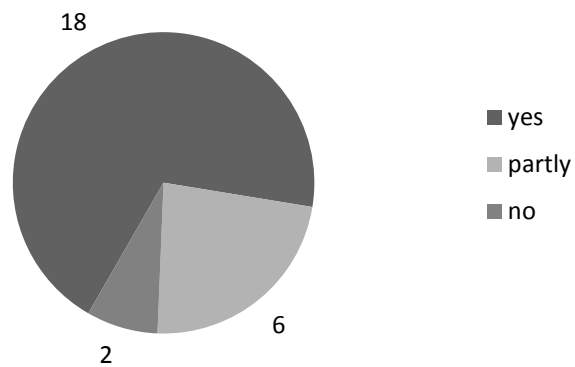
115. The right to information concerning fundamental procedural rights:



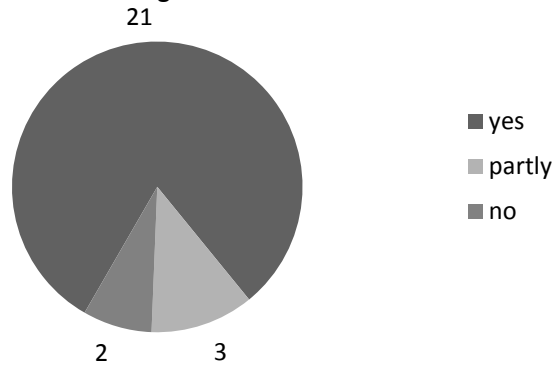
116. The right to legal advice:



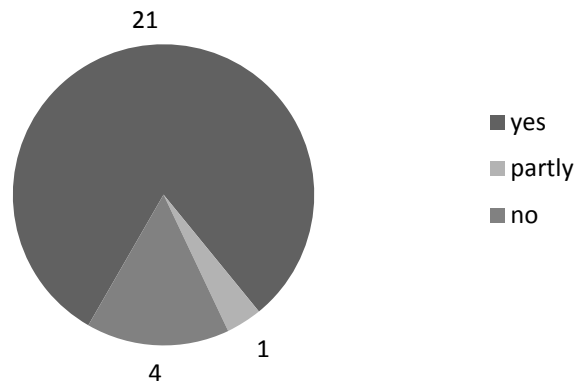
117. The right to legal assistance (partially) free of charge:



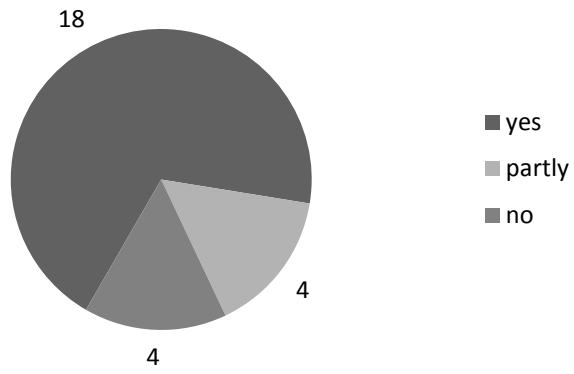
118. The right to interpretation and the right to translation of documents:



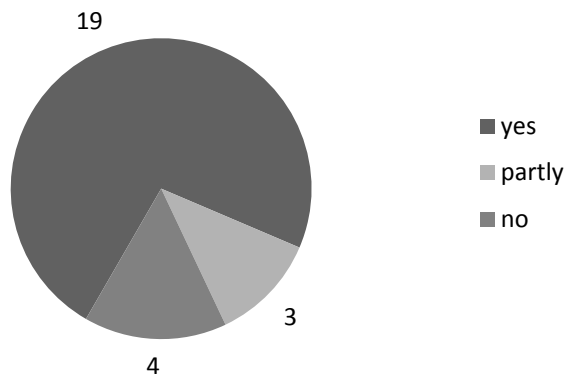
119. The right to information concerning fundamental procedural rights:



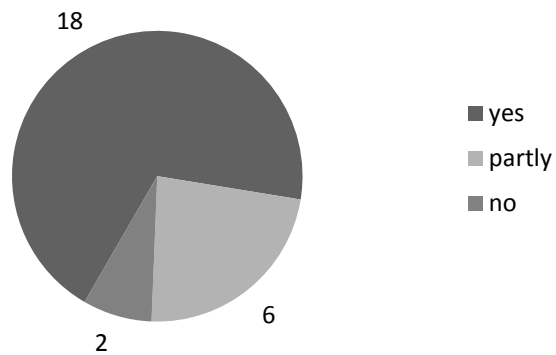
121. The right to legal assistance (partially) free of charge:



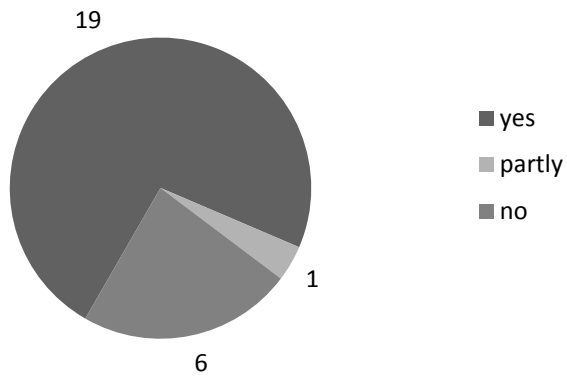
122. The right to interpretation and the right to translation of documents:



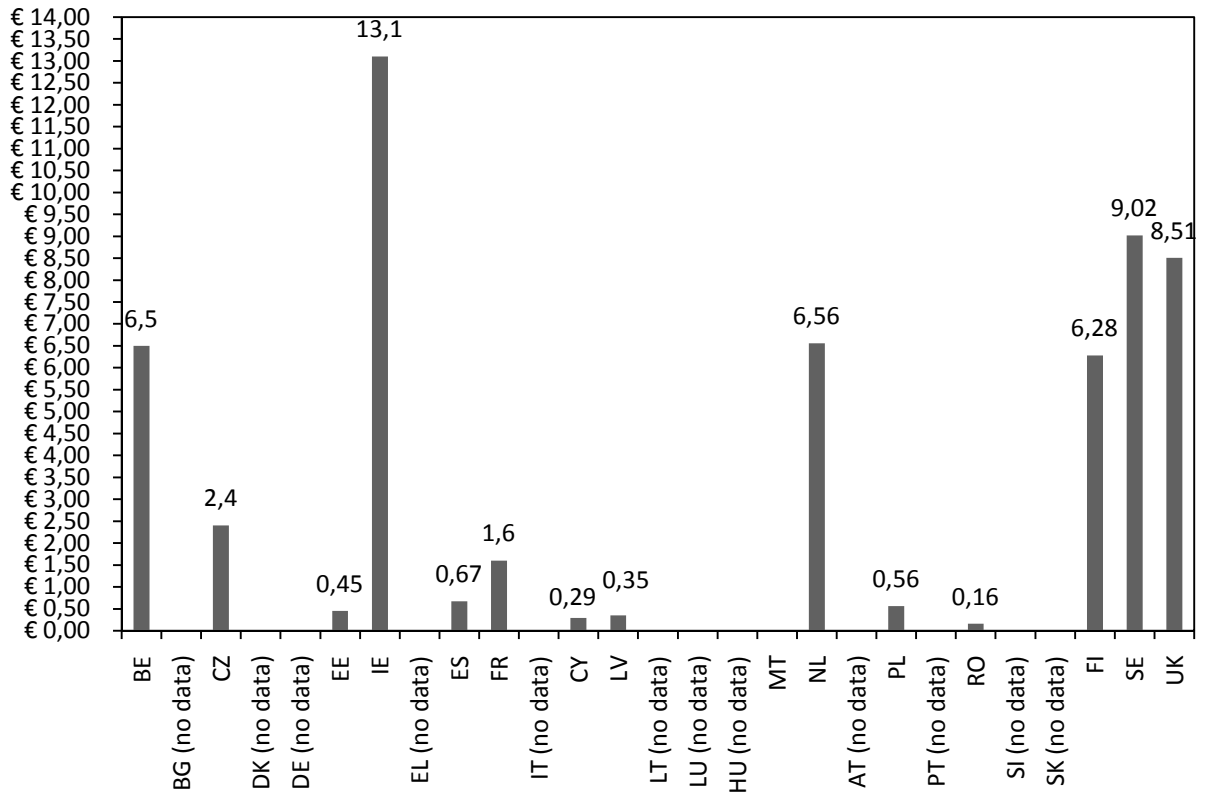
120. The right to legal advice:



123. The right to information concerning fundamental procedural rights:



53, 54 and 55. € Criminal legal aid per inhabitant



ANNEX 3 - EU PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS

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AUSTRIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹

yes

According to Section 59 para 1 CCP (Austrian Code of Criminal Procedure) the suspected person has the right to contact a lawyer after his arrest.

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

According to Section 59 para 1 CCP, before taking the suspect to prison, this contact may be monitored, as well as limited to the extent necessary for granting powers of attorney and obtaining general legal advice, whenever this appears necessary in order to avoid any impairment of the investigations or the evidence. In this case, the right to contact a lawyer can be effected at a proceeded stage of the investigation.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

According to Section 171 para 3 subpara 1 CCP the suspect shall be informed immediately after his arrest of his right contact a lawyer.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Both orally and in writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP a suspect, who is not able to communicate adequate in the language of the proceeding has the right of interpretation, particularly during the instruction of his/her principal rights in proceedings. The legal instruction includes also the information about the right to contact a lawyer.

Pursuant Section 126 para 1 CCP an interpreter is to be appointed for the interrogation/examination of the detained suspect if he is not able to communicate in the language of the proceeding.

Law enforcement personnel are furthermore obliged to hand out immediately after the arrest to the detained person an information sheet which is available in more than twenty languages; you will find an English version enclosed.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

Yes.

¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

008 - If so, please specify on which grounds:

Basically, the contact with the lawyer shall not be restricted. According to Section 59 para 1 CCP, before taking the suspect to penal institution of the court, this contact may be monitored, as well as limited to the extent necessary for granting powers of attorney and obtaining general legal advice, whenever this appears necessary in order to avoid any impairment of the investigations or the evidence.

Serious reason to restrict the contact in this context means for example, if the suspect is a member of a criminal organisation and the other members are not yet arrested.

It should be mentioned that every detained suspect must within 48 hours of arrest either be released from custody or, if the Public prosecutor seeks to have this person placed in detention awaiting trial or if that person were arrested on the basis of a court warrant or an order of the prosecution authority that was authorised by a court, be taken to the penal institution of that court.

009 - If so, please specify for which period of time?

Until a certain stage of the investigation or the proceedings.

According to Section 59 para 1 CCP the contact can only be restricted before the suspect is taken to the court prison.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

The suspect has the right to choose a defence counsel (Section 49 subpara 2 CCP) to grant him/her powers of attorney and to consult with him/her. A defence counsel is a person entitled to practice as a lawyer, or a person otherwise entitled by law to represent persons in criminal proceedings, or a person who has obtained the qualifications to teach criminal law and criminal procedural law at an Austrian university, once the suspect has authorized that person to act as his/her legal assistance (Section 58 para 1 CCP).

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

According to Section 59 para 2 the contact of an arrested suspect with the lawyer is not allowed to be monitored. But before taking the suspect to prison of the court, this contact may be monitored, as well as restricted to the extent necessary for granting powers of attorney and obtaining general legal advice, whenever this appears appropriate in order to ensure that the collection of evidence and further investigative steps are not jeopardised. Such restriction and limitation in order to avoid any impairment of the investigations must be based in a case by case manner on well-founded reasons. (see also question 8).

012 - Consultation (in person or by telephone) is possible before questioning by the police²?

Yes.

According to section 58 para 1 CCP the suspect has the right to contact a counsel and to appoint her/him to represent him. Police officers are obliged to inform the suspect in advance of his interrogation of his right to consult a counsel before being interrogated (Section 164 para 1 CCP). But according to Section 59 para 2 CCP the contact can be limited (see also answer to question 8).

² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

Recently a stand-by legal counselling service (Rechtsanwaltlicher Journdienst) has been provided by initiative of the Austrian Bar Association (Österreichische Rechtsanwaltskammer) and the Federal Ministry of Justice. This service is available to arrested suspects/defendants under following conditions: The right to assistance of a defence counsel comprises a telephone or, by request of the suspect/defendant, a personal consultation with a lawyer and, if necessary, legal assistance during his/her interrogation (Section 164 CCP) as well as other actions reasonably required for an appropriate defence (like e.g. the application for the appointment of a Legal Aid Lawyer by the court, etc.). The Austrian Bar Association provides for this purpose a stand-by phone number ("hotline") available daily from 0.00 to 24.00 hours where, if required, a counsel entitled to represent clients in criminal proceedings can be contacted immediately. Any power of attorney given within the scope of the stand-by legal counselling service is considered as cancelled as soon as the suspect is detained in a penal institution or released from detention. However, the suspect is free to extend this power of attorney for the defence counsel beyond that period. The first call and the first telephone consultation with a defence counsel are free of charge. During this first consultation the counsel will provide the suspect with detailed information on the nature, range and potential costs of services available within the scope of the legal counselling service.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison³?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

The lawyer needs a formal authentication (during the preliminary proceeding from the public prosecutor and during the trial proceeding from the presiding judge) to visit the suspect in prison.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

Yes.

There is no specific time limit, but the lawyer has to respect the office hours of the prison.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

According to Section 59 para 2 CCP a detained suspect may communicate with his/her defence counsel without being monitored. However, if the accused is also detained because of a danger of conspiracy or collusion, and if it needs to be feared, on account of specific aggravating circumstances, that contacts

³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

with the defence counsel might lead to an impairment of the evidence, the public prosecutor – before taking the accused to the court prison also the criminal police – may order the monitoring of the oral and the written contacts with the defence counsel. In any event, the monitoring may only take place when the accused and the defence counsel have been informed thereof, as well as for a maximum period of two months as of the date of the arrest. Once charges have been brought against the accused, the monitoring shall cease in any event. Such restriction and limitation in order to avoid any impairment of the investigations must be based in a case by case manner on well-founded reasons.

019b - Please specify, on which grounds surveillance can be ordered:

see answer question 19

019c - Please specify, for which period of time surveillance can be ordered:

In any event, the monitoring may only take place when the accused and the lawyer have been informed thereof, as well as for a maximum period of two months as of the date of the arrest. Once charges have been brought against a suspected person, the monitoring shall cease in any event.

019d - Please specify, the kind of surveillance that can be ordered:

The surveillance can cover oral communication (by telephone) and also the visit of the lawyer in person.

019e - Please specify, any legal remedies provided to the defence in this respect:

According to Section 106 para 1 CCP the suspect can file an objection against a violation of a personal right, if the restriction of contact doesn't correspond with the law.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

see answer of question 19; there is no difference between the oral and the written communication (according to Section 188 para 3 in conjunction with Section 59 para 2 CCP).

020b - Please specify, on which grounds surveillance can be ordered:

see answer of question 19

020c - Please specify, for which period of time surveillance can be ordered:

see answer of question 19c

020d - Please specify, the kind of surveillance that can be ordered:

The surveillance includes the whole written communication; there are no specific guidelines.

020e - Please specify, any legal remedies provided to the defence in this respect:

see answer of question 19e

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

According to Section 164 para 2 CCP the suspect has the right to call in a defence counsel to attend her/his questioning. But calling in a lawyer may be waived, whenever this appears to be necessary in

order to avoid any risk to the investigations, or an impairment of the evidence. In this case, an audio or video recording shall be made, to the extent possible.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] - Yes. The CCP reform brought important changes with regard to the distribution of competences, because it re-modelled the whole pre-trial proceeding. The stage of pre-trial investigations, led by the investigative judge, does not exist in that form any longer. According to the STPRG solely the public prosecutor leads pre-trial investigations and the court is in principle merely responsible for exercising judicial control and granting legal protection. But it is to be mentioned that the suspect has also the right that a lawyer is present, whenever he is questioning by the judge (especially the mandatory questioning on further justification of detention).

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions - Yes.
- c. make remarks -
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

According to Section 164 para 1 CCP the suspect shall be informed before being interrogated, that he/she has the right to have a lawyer present during his interrogation and consult his/her lawyer before the interrogation, unless this contact may be restricted pursuant to Section 59 CCP (see answer to question 19).

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

If the suspect is not arrested, he/she shall be informed before questioning.

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights - Yes.

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

see answer to question 6

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

First of all, it should be mentioned that a suspect is to be informed of his right to refuse to give information and to answer questions in respect of the charges that have been preferred against him. He

should also be advised to consider that his statement might help to clarify his position and to dispel the suspicions against him. Furthermore he should pay attention that refusing to give evidence he may deprive himself of the possibility to provide his version of the facts and to identify possible errors or false allegations. At least he should be informed that it will be considered an extenuating circumstance in the judicial proceedings, if his statement contributes to establishing the truth. On the other hand a confession never has a binding effect. The judicial authorities are obliged to ascertain the truth even a confession was made. The principle of free evaluation of evidence (Section 14 CCP) does not allow any rules on the probative value. The burden of proof lies with the prosecutor and the court has to proof each confession in the light of the whole evidence of the facts carefully and faithfully. If any doubts on the credibility remains, the court has to give the accused the benefit of the doubt.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

If the questioning is recorded in sound or vision, the suspect (or witness) has to be informed about this possibility before questioning and has to agree to the recording (Section 97 para 1 CCP). See also answer of question 21.

030 - If so, how many copies of the audio recording are made?

Only one copy is made and remains on the file.

031 - If so, who is entitled to receive a copy of the audio recording?

Every person who has a right of inspection of files (suspect, victim, or person joining the criminal proceeding as a private party (Privatbeteiligte)).

032 - Is the questioning of the suspect video recorded?

Sometimes.

see question 29

033 - If so, how many copies of the video recording are made?

See question 30

034 - If so, who is entitled to receive a copy of the video recording?

See question 31

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

If the suspect is not in a position to bear the entire costs of a defence counsel without affecting the subsistence necessary for a plain lifestyle for himself and his/her family, the court has to decide, upon an application by the suspect, to assign a defence counsel to the defendant, whose costs he/she will not have to bear or bear only in part, if and whenever this is in the interest of administering justice and especially in the interest of an appropriate defence (Section 61 para 2 CCP).

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁴?

Yes.

In the following cases, an accused must be represented by a defence counsel. In any of these cases the law assumes that a defence counsel is necessary.

1. throughout the proceedings if and as long as the accused is detained in pre-trial detention or in custodial detention,
2. throughout the proceedings to accommodate the accused in an institution for mentally disturbed offenders,
3. during the trial on accommodating an accused in one of the institutions listed in Section 22 and 23 of the Criminal Law Code (these are institutions for addicted offenders in need of curing (Section 22) and institutions for dangerous repeat offenders (Section 23),
4. during the trial in a regional court before a jury or a panel of lay judges,
5. during the trial in a regional court before a single judge, if the punishable act carries a prison term of more than three years, except for the cases listed in Section 129 items 1 to 3, and Section 164 (4) of the Criminal Law Code (housebreaking, receiving of stolen goods),
6. in proceedings on legal remedies, based on a nullity complaint or an appeal of the court decision taken by a jury or a panel of lay judges,
7. when filing an application for the renewal of criminal proceedings, and on the day of the public hearing scheduled for the application,
8. if the accused is blind, incapable of hearing, dumb, or handicapped in some other way, or does not have sufficient knowledge of the language of the court and therefore is not in a position to defend himself/herself,
9. in the proceedings on the legal remedy based on the filing of an appeal,
10. in complex factual and legal circumstances (the judge has to decide, if a case fulfils this criteria).

⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

037 - Is there a means test⁵?

Yes.

In the application the suspect has to argue, why he/she is not able to bear the entire costs of a defence counsel without affecting the subsistence necessary for a plain lifestyle for himself and the family. The suspect can use a standardised form and has to add the relevant documents about his/her financial situation. On this basis the judge has to decide, if the suspect can bear the costs of the defence counsel or not.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms - Yes.
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...] - Yes. There is no particular rule how to prove, that the suspect is unable to pay for a defence counsel; the suspect can use a standard form or can freely demonstrate his/her financial situation.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

In the following cases, an accused must be represented by a defence counsel. In any of these cases the law assumes that a defence counsel is necessary.

1. throughout the proceedings if and as long as the accused is detained in pre-trial detention or in custodial detention,
2. throughout the proceedings to accommodate the accused in an institution for mentally disturbed offenders,
3. during the trial on accommodating an accused in one of the institutions listed in Section 22 and 23 of the Criminal Law Code (these are institutions for addicted offenders in need of curing (Section 22) and institutions for dangerous repeat offenders (Section 23),
4. during the trial in a regional court before a jury or a panel of lay judges,
5. during the trial in a regional court before a single judge, if the punishable act carries a prison term of more than three years, except for the cases listed in Section 129 items 1 to 3, and Section 164 (4) of the Criminal Law Code (housebreaking, receiving of stolen goods),
6. in proceedings on legal remedies, based on a nullity complaint or an appeal of the court decision taken by a jury or a panel of lay judges,
7. when filing an application for the renewal of criminal proceedings, and on the day of the public hearing scheduled for the application,
8. if the accused is blind, incapable of hearing, dumb, or handicapped in some other way, or does not have sufficient knowledge of the language of the court and therefore is not in a position to defend himself/herself,
9. in the proceedings on the legal remedy based on the filing of an appeal,
10. in complex factual and legal circumstances (the judge has to decide, if a case fulfils this criteria).

⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

When the suspect is not arrested, he/she is to inform after bringing in an accusation. During the investigating proceeding is no obligation to be represented by a defence counsel (beside the suspect is arrested or the suspect is juvenile).

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights - Yes.

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP a suspect, who is not able to communicate adequate in the language of the proceeding has the right of interpretation, particularly during his legal instructions and his interrogation.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

The court has to decide on the application with a formal adjudication and the suspect can appeal against this decision (Section 87 CCP).

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. see question 48

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board -

e. other authority, please specify authority [...]- Yes. If the court approves the request for legal assistance, the Bar Association instructs a specific lawyer as a defence counsel for the trial. The Bar Association allocates the cases by a certain distribution key.

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

The ministry of justice provides every year a lump-sum to the Austrian Bar Association, as a compensation for the legal assistance (this lump-sum includes legal aid in civil and criminal matters).

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

In the case of conviction the defendant may have to pay a certain amount of retention as reimbursement of costs. According to sec 393 para 1a CCP prerequisites for this retention are the conviction of the defendant and that his or her maintenance is not impaired by payment of the retention.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

Because of administrative reasons only the total amount of legal assistance (including legal aid in civil and criminal matters) can provided. The lump-sum for legal aid during the year 2008 was € 18.879.166, --, which was paid to the Austrian Bar Association by the Federal Ministry of Justice.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

The percentage amounts to 1,69 of the total expenditure of the total justice budget.

055 - What is the size of the population of your country?

8.3 Million People (official counting per Oct. 2006)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁶?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect⁷ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case - Yes.
- f. legal complexity of the case - Yes.
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. see also answer of question 36

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

The state only covers the costs of an obligatory defence, if the suspect fulfils the obligation of legal assistance (if he/she is not able to bear the entire costs of a defence counsel without affecting the subsistence necessary for a plain lifestyle for himself and the family).

062 - Is there a possibility to appoint an independent counsel, such as *amicus curiae* or special advocate?

Yes.

The suspect is free to choose his own lawyer. In cases of obligatory defence, the suspect and his/her legal representative shall be requested to grant powers of attorney to a defence counsel, or to apply for assigning for a legal-aid defence counsel for the proceedings. If neither the suspect nor his/her legal representative authorised a defence counsel, the court shall assign a defence counsel *ex officio*, with the suspect bearing the costs of the defence counsel (*ex officio* defence counsel), unless the prerequisites of legal aid are existent (Section 61 para 3 CCP). An institution like "*amicus curiae*" is not provided in the Austrian criminal procedure law.

⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁷ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

No.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

067 - Are there any standard fees for legal translation of documents?

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

According to Section 56 para 1 CCP a suspect has the right of interpretation, in particular during the legal instruction, during the collection of evidence when the suspect takes part, and during the hearing. If the suspect insists he/she has the right of interpretation during the contact with the lawyer or when the suspect obtains an application or an order from the prosecutor, or an adjunction from the court. Further the suspect has the right of Interpretation during the inspection of the file, if he/she has no defence council or there are particular reasons that it can not expected that she/he can do it alone, to take care, that the relevant parts of the file shall translated (orally).

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Partly.

The state bears the costs for translation; even in the case of conviction the defendant is not obliged to pay a contribution of these cost if the appointment was necessary cause of the inability to communicate in the language of the proceeding (Section 381 para 6 CCP).

077 - Are there any standard fees for legal interpretation?

Yes.

Standard fees are determined by a law. The fee depends basically on the duration of the interpretation (for example the duration of the proceeding or questioning). There are higher fees if a special preparation is necessary or the interpretation has to be carried out on weekend or on an official holiday.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

If the suspect is deaf or dumb he/she has the right to a special Interpreter for sign language, if the suspect is able to communicate in this way (Section 56 para 2 CCP).

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

According to Section 50 CCP every suspect shall be informed as soon as possible by the criminal police or the public prosecutor about the investigative proceedings conducted against him/her and of the offence of which he/she is suspected, as well as about his/her principal rights in proceeding, this includes also the information about obtaining interpretation assistance.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

If the suspect is not arrested, he/she shall be informed as soon as possible (see question 83).

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP a suspect, who is not able to communicate adequate in the language of the proceeding has the right of interpretation, particularly during his legal instructions.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

According to Section 50 CCP every suspect shall be informed as soon as possible by the criminal police or the public prosecutor about the investigative proceedings conducted against him/her and of the offence of which he/she is suspected, as well as about his/her principal rights in proceeding (mentioned in Section 49 CCP).

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

see question 87

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

If the suspect is not arrested, he/she shall be informed as soon as possible (see question 87). If the suspect is arrested, than he/she shall be informed promptly after arrest.

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP a suspect, who is not able to communicate adequate in the language of the proceeding has the right of interpretation, particularly during his legal instructions.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

According to Section 49 item 3 CCP in conjunction with Section 51 to 53 CCP the suspect has the right to inspect the file.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

see answer of question 87

⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
If the suspect is not arrested, he/she shall be informed as soon as possible (see question 87). If the suspect is arrested, than he/she shall be informed promptly after arrest.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights - Yes.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP the suspect has the right of Interpretation during the inspection of the file, if he/she has no defence council or there are particular reasons that it can not expected that she/he can do it alone, to take care, that the relevant parts of the file shall translated (orally).

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment -
- b. the detention order -
- c. the reasons for detention -
- d. the final judgment (sentence) -
- e. parts of the case file -
- f. other documents, please specify [...] - Yes. Basically the suspect has no right to be provided with a written version of specific parts of the file, but he can apply to translate certain documents.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

According to Section 49 item 4 CCP the suspect has the right to comment on the reproaches against him/her, or not to give any testimony.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

see answer of question 87

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
If the suspect is not arrested, he/she shall be informed as soon as possible (see question 87). If the suspect is arrested, than he/she shall be informed promptly after arrest.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights - Yes.

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

see answer of question 87

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

The Austrian system of criminal procedure is based on the principle of ex-officio investigating an ascertaining the truth (police, prosecutor, court). The public prosecutor and the police have to conduct the pre-trial investigation consensually (according to Section 98 CCP), whereas the prosecutor leads the investigations and is therefore responsible for the amount and content of the investigations. The prosecutor not only leads the investigation he also decides about its continuation or its ending. Against his/her declared will an investigation process shall not be initiated or continued (Section 101 para 1 CCP). This means, that the suspects can not summon or examine witnesses or expert by themselves, they can only influence the way of investigations indirectly (only during the trial proceeding (or an adversarial interrogation of witnesses or co-accused persons) the suspects can ask directly the witnesses or an expert).

For example:

The suspects can - according to Section 55 CCP - apply to summon a certain witness, or instruct an expert to render an expert opinion, or apply to order certain other investigations. The implementation of the apply rests on the criminal police or on the public prosecutor. If the prosecutor (or the police) doesn't follow this application the suspect can file an objection against a violation of a personal right (according to Section 106 para 1 CCP).

According to Section 165 the suspect may take part at an adversarial interrogation of witnesses or co-accused persons by the judge. Basically there is the opportunity to take part at this kind of interrogation in person and ask questions to the witness (or co-accused person). But according to Section 165 para 3 CCP the opportunity to take part in the interrogation of a witness shall be restricted (upon application by the public prosecutor or ex officio) in respect to his/her young age, or his/her mental or physical state, or in the interest of establishing the truth. In this case the parties in the proceedings and their representatives can follow the interrogation (and exercise their right to ask questions) by using technical equipment for audio and video transmission, without being present (in the same room) during the interrogation.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

According to Section 49 item 6 CCP (in combination with Section 50 CCP) the suspect shall be informed about his/her right to apply to order certain investigations through the authorities; according to Section 49 item 10 CCP (in combination with Section 50 CCP) shall be informed about his/her right to take part at an adversarial interrogation of witnesses or co-accused persons.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

If the suspect is not arrested, he/she shall be informed as soon as possible (see question 87). If the suspect is arrested he/she shall be informed promptly after arrest.

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** - Yes.

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

According to Section 56 para 1 CCP a suspect, who is not able to communicate adequately in the language of the proceeding has the right of interpretation, particularly during his legal instructions.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Partly.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file - Yes.
- c. information on the right to remain silent - Yes.
- d. information on the right to call/examine witnesses and experts - Yes.

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Partly.

not before the order is executed: a freezing order is a provisional measure, which, in accordance with the FD, has to be recognized and executed within 24 hours upon receipt of the “request”; it would be incompatible with the aim of the instrument if the person concerned would be heard before the freezing takes place. After the freezing, the person concerned has the right to appeal, and may seek legal advice.

117 - The right to legal assistance (partially) free of charge:

Partly.

see answer to question 116; insofar as legal advice can be sought, legal assistance free of charge is possible under the rules described in Chapter 2 .]

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Partly.

119b. (Check any that apply)

partly, please specify:

- | | |
|---|--------|
| a. information on the charge | - Yes. |
| b. information on access to the file | - Yes. |
| c. information on the right to remain silent | - Yes. |
| d. information on the right to call/examine witnesses and experts | - |

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Partly.

123b. (Check any that apply)

partly, please specify:

- | | |
|---|--------|
| a. information on the charge | - |
| b. information on access to the file | - Yes. |
| c. information on the right to remain silent | - Yes. |
| d. information on the right to call/examine witnesses and experts | - Yes. |

BELGIUM

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁹

yes

Art. 20 §1 Wet voorlopige hechtenis (22/7/1990)

Onmiddellijk na het eerste verhoor kan de verdachte vrij verkeer hebben met zijn advocaat.

002 - If so, when can this right be effected:

Within [...] hours after arrest

24 hours :the arrested person has to be heard by the investigating judge within 24 hours of the arrest and the right to contact a lawyer starts after this hearing.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Art. 16 § 4. Wet voorlopige hechtenis (22/7/1990)

De onderzoeksrechter deelt de verdachte mede dat hij het recht heeft een advocaat te kiezen.

004 - If so, when does the duty to inform the suspect of this right arise?

Within [...] hours after arrest

24 hours :the arrested person has to be heard by the investigating judge within 24 hours of the arrest and the investigating judge has to inform the arrested person at that time of his right to contact a lawyer.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

In writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Arrested persons can choose their language. If this is a language that the officials do not understand, an interpreter is appointed. When the investigating judge informs the person on his right to choose a lawyer, the interpreter will have to translate this communication (art. 31 of the language law of 15 June 1935: In al de ondervragingen van het opsporingsonderzoek en van het gerechtelijk onderzoek, alsmede voor de onderzoeks- en vonnisgerichten, gebruiken de partijen die persoonlijk verschijnen de taal van hun keuze voor al hun mondelinge verklaringen.

Wanneer de agenten die met het opsporingsonderzoek belast zijn, het parket, de onderzoeksrechter of de bovenvermelde rechtsmachten de door de partijen gebruikte taal niet kennen, doen zij een beroep op de medewerking van een beëdigd tolk.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

⁹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Art. 16 § 4 Wet voorlopige hechtenis: De onderzoeksrechter deelt de verdachte mede dat hij het recht heeft een advocaat te kiezen. Indien de verdachte geen advocaat gekozen heeft of kiest, verwittigt de rechter de stafhouder van de Orde of diens gemachtigde. Van die formaliteit wordt melding gemaakt in het proces-verbaal van verhoor.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

In general there is no control. Only in very exceptional cases (lawyer himself is suspected of certain crimes, see answer under question 19) it is possible that the communication is monitored.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁰?

No.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

No.

014 - If so, does the lawyer need permission to visit his client held at the police station?

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

016 - Can the lawyer visit his client detained in prison¹¹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

¹⁰ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹¹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

The investigating judge (art. 90 ter of the code of criminal procedure).

019b - Please specify, on which grounds surveillance can be ordered:

See the article 90cties of the Code of Criminal Procedure (free translation):

"The measure can only concern the rooms, the home or the means of communication or telecommunication of a lawyer or a doctor, when he himself is suspected to have committed one of the criminal offences mentioned in the article 90ter of the Code of Criminal Procedure, or to have participated to this or, when precise facts make presume that third persons which are suspected to have committed one of the criminal offences mentioned in the article 90ter of the Code of Criminal Procedure, have used these rooms, the home or the means of communication or telecommunication. These measures can only be executed after to have informed the 'bâtonnier' (head/chief of the Bar) or the representative of the order of the doctors. These persons will also be informed by the investigation judge of the parts of the communication or the telecommunication which falls to his sense under professional secrecy and that will not be registered in the process-verbal as mentioned in the article 90sexies, third part, of the Code of Criminal Procedure."

019c - Please specify, for which period of time surveillance can be ordered:

The investigating judge can order this for one month, monthly renewable with a maximum of six months. The investigating judge can within this period of time stop the measure at anytime when he states that the circumstances, in which the measure was ordered, are disappeared.

019d - Please specify, the kind of surveillance that can be ordered:

"In exceptional circumstances the investigating judge can, when the investigation requires this, private communication or telecommunication, during the transmission of this, tap this, take note of this and record this, when there are serious indications that the fact for which he is seized, is a criminal offence as mentioned in the §2 en when the other means of investigation are not sufficient to find out the truth. To make it possible to monitor directly, to take note or to record private communication or telecommunication, the investigating judge can order to, at any time, also without the knowledge or without the permission of either the resident, either the proprietor or his rightful claimant, to penetrate in a house or in a private place."

019e - Please specify, any legal remedies provided to the defence in this respect:

See article 90novies of the Code of criminal procedure(free translation):

"At the latest 15 days after the decision of the regulation of the proceedings ('règlement de la procédure') has become final or after the citation as meant in the article 524bis, §6, has been introduced, the clerk of the court informs in writing, at instruction of the public prosecutor, every person that has been the subject of a measure as meant by the article 90ter of the Code of Criminal Procedure of this measure and of the days when this measure was executed."

Furthermore, the parties can ask for a transcription of the parts of the communication that were not written down as foreseen by the article 90sexies of the Code of Criminal Procedure (see article 90septies of the Code of Criminal Procedure). All these transcriptions are joined to the judicial file and are fully part of it so they are subject to all means of the rights of defence as all the other elements of evidence.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

No.

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police -
- b. questioning by the prosecutor -
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions -
- c. make remarks -
- d. consult with his client in private -
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

We have a 'free' evidence system limited by the rights of defence and human rights. It's up to the judges discretionary competence to appreciate the evidence brought before him.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

There is no limitation, it only has to be decided by the prosecutor or the investigating judge

Art. 112ter of the Code of criminal procedure: " § 1. Onverminderd het bepaalde in de artikelen 92 tot 103, kan de procureur des Konings of de onderzoeksrechter de audiovisuele of de auditieve opname van het verhoor bevelen. De te horen persoon wordt op voorhand van dit bevel op de hoogte gebracht.

§ 2. Het opgenomen verhoor wordt verricht door de procureur des Konings of de onderzoeksrechter, naargelang van het geval, of door een bij name door hem aangewezen politieambtenaar.

§ 3. De procureur des Konings of de onderzoeksrechter stelt van het verhoor een proces-verbaal op waarin hij, onverminderd de rechten bedoeld in artikel 47bis , de belangrijkste elementen van het onderhoud vermeldt en eventueel de meest relevante passages overschrijft.

Tevens vermeldt het proces-verbaal de redenen waarom de audiovisuele of de auditieve opname werd bevolen.

§ 4. Onverminderd de toepassing van artikel 47bis , wordt tot de volledige en letterlijke overschrijving van het verhoor overgegaan op verzoek van de onderzoeksrechter, van de procureur des Konings, van de gehoorde persoon, of van de partijen die in het geding betrokken zijn. De overschrijving wordt zo spoedig mogelijk bij het dossier gevoegd.

§ 5. De opname van het verhoor wordt in twee exemplaren gemaakt. Beide cassettes worden als originelen beschouwd en ter griffie als overtuigingsstuk neergelegd.

§ 6. De opname mag slechts worden bekeken of beluisterd, naar gelang van het geval, door de personen die in het kader van het gerechtelijk dossier beroepshalve betrokken zijn bij het opsporingsonderzoek, het gerechtelijk onderzoek of het vonnis, alsmede door de partijen in het geding en de gehoorde persoon.

De niet aangehouden inverdenkinggestelde en de burgerlijke partij kunnen hiertoe overeenkomstig artikel 61ter bij de onderzoeksrechter een verzoek indienen.

Alle partijen hebben het recht om de opname te bekijken of te beluisteren, naargelang van het geval, nadat de procureur des Konings overeenkomstig artikel 127 de regeling van de rechtspleging heeft gevorderd.

§ 7. Voor de toepassing van artikel 341 wordt de opname van het verhoor van een getuige gelijkgesteld met de schriftelijke verklaring van een getuige."

030 - If so, how many copies of the audio recording are made?

There are two recordings and both are considered as the original.

031 - If so, who is entitled to receive a copy of the audio recording?

There are no copies. It is possible to ask for a complete transcription that will be joined in the dossier.

032 - Is the questioning of the suspect video recorded?

Sometimes.

There is no limitation, it only has to be decided by the prosecutor or the investigating judge

Art. 112ter of the Code of criminal procedure: " § 1. Onverminderd het bepaalde in de artikelen 92 tot 103, kan de procureur des Konings of de onderzoeksrechter de audiovisuele of de auditieve opname van het verhoor bevelen. De te horen persoon wordt op voorhand van dit bevel op de hoogte gebracht.

§ 2. Het opgenomen verhoor wordt verricht door de procureur des Konings of de onderzoeksrechter, naargelang van het geval, of door een bij name door hem aangewezen politieambtenaar.

§ 3. De procureur des Konings of de onderzoeksrechter stelt van het verhoor een proces-verbaal op waarin hij, onverminderd de rechten bedoeld in artikel 47bis , de belangrijkste elementen van het onderhoud vermeldt en eventueel de meest relevante passages overschrijft.

Tevens vermeldt het proces-verbaal de redenen waarom de audiovisuele of de auditieve opname werd bevolen.

§ 4. Onverminderd de toepassing van artikel 47bis , wordt tot de volledige en letterlijke overschrijving van het verhoor overgegaan op verzoek van de onderzoeksrechter, van de procureur des Konings, van de gehoorde persoon, of van de partijen die in het geding betrokken zijn. De overschrijving wordt zo spoedig mogelijk bij het dossier gevoegd.

§ 5. De opname van het verhoor wordt in twee exemplaren gemaakt. Beide cassettes worden als originelen beschouwd en ter griffie als overtuigingsstuk neergelegd.

§ 6. De opname mag slechts worden bekeken of beluisterd, naar gelang van het geval, door de personen die in het kader van het gerechtelijk dossier beroepshalve betrokken zijn bij het opsporingsonderzoek, het gerechtelijk onderzoek of het vonnis, alsmede door de partijen in het geding en de gehoorde persoon.

De niet aangehouden in verdenking gestelde en de burgerlijke partij kunnen hiertoe overeenkomstig artikel 61ter bij de onderzoeksrechter een verzoek indienen.

Alle partijen hebben het recht om de opname te bekijken of te beluisteren, naargelang van het geval, nadat de procureur des Konings overeenkomstig artikel 127 de regeling van de rechtspleging heeft gevorderd.

§ 7. Voor de toepassing van artikel 341 wordt de opname van het verhoor van een getuige gelijkgesteld met de schriftelijke verklaring van een getuige."

033 - If so, how many copies of the video recording are made?

There are two recordings and both are considered as the original.

034 - If so, who is entitled to receive a copy of the video recording?

There are no copies. It is possible to ask for a complete transcription that will be joined in the dossier.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Article 508/13 of the judicial code

De juridische tweedelijnsbijstand kan gedeeltelijk of volledig kosteloos zijn voor wie over onvoldoende inkomsten beschikt en voor de met hen gelijkgestelde personen.

De Koning bepaalt bij een in Ministerraad overlegd besluit het bedrag van die inkomsten, de over te leggen bewijsstukken en wie gelijkgesteld wordt met de personen met onvoldoende inkomsten.

Het bureau gaat na of voldaan is aan de voorwaarden inzake kosteloosheid.

Het bureau bewaart een afschrift van de stukken.

2.1 Criteria

**Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?
More specifically,**

036 - Is there a merits test¹²?

No.

037 - Is there a means test¹³?

Yes.

legal basis: Royal Decree of 18 December 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire

This Royal Decree of 18 December 2003 provides the maximum income under which a person can obtain partially or totally free legal assistance, dependant on the family situation (e.g. single, single with children). Furthermore, some persons are assimilated by the Decree to the previous category (minors, asylum seekers, person who receives disabled allowance or minimum old age pension,...) and thus are always entitled to obtain legal aid. Finally, there is also a category of persons who are presumed to have not sufficient income (like persons remanded in custody, mentally disabled persons covered by the law of 26 June 1990 on the protection of mentally disabled persons).

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms

- Yes.

b. any rules on what documentation should be provided, please specify rules [...]Yes. The Royal Decree of 18 December 2003 stipulates that the documentary evidence of the income must be supplied (in the practice, there is a list of the relevant documents that must be furnished). In some situations (often for assimilated persons), the Decree stipulates that specific/probative documents which confirm the status of the person have to be produced (e. g. for the minors, a copy of the ID; for asylum seekers, the proof of the asylum procedure,...).

c. other rules, please specify [...]

-

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

No.

¹² A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹³ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

041 - When does the duty to inform the suspect of this right arise?

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?
Yes.

Article 508/15 of Judicial Code provides for a time limit of 15 days

046 - When a request is denied, is there a legal remedy?

Yes.

Article 508/16 of Judicial Code provides for an appeal before the labour court (tribunal du travail)

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] - Yes. The lawyer has to be registered on the list of the lawyers who want to provide free legal aid (this list is drawn up by the bar)

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]-

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

A number of points is attributed to each case/procedure (or to each service in the cases where there are no procedures). When the procedure/the service for a person is finished, the lawyer closes his report and

requests the number of points attributed for the procedures/services that he furnished for this person. The value of the point is fixed each year and the lawyer receives the amount of the points attributed. Because of the annual updating of the value of the point, the lawyer doesn't know the exact amount which is allocated for a case.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

only where the person benefits from the legal aid partially free of charge (depending on the amount of the income of the person). There is a practice at the legal aid board to demand the payment of 125 euros, but this amount isn't stipulated in a legal text.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

54.220.000 euros

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

6.4 % of the amount of the judicial organisation budget (NOT only criminal justice budget)

055 - What is the size of the population of your country?

10.666.866 inhabitants (28/08/2008)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

the lawyer has to be registered on the list of the lawyers who want to provide free legal aid (this list is drawn up by the bar). This list specifies the specialisation of the lawyers for which they have to justify or for which they have to follow some training.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...]-

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁴?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹⁵ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

There are 2 situations : if the person is entitled to obtain legal aid, it is the general system that apply. If not (sufficient income), the lawyer establishes his fees. It is only when the person doesn't pay the fees that the State will pay for an allowance to the lawyer for the work done.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

Article 54bis § 3 of the law of 8 April 1965 on the protection of the youth : The president of the bar or the legal aid board makes sure that, when there is a discrepancy of interest, a minor will be defended by a lawyer other than the one chosen by the parents or the tutor.

¹⁴ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁵ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

article 22 'language law' of 1935:

"Ieder verdachte die alleen Nederlands en Duits of een van die talen verstaat, kan vorderen dat bij zijn dossier een Nederlandse of een Duitse vertaling wordt gevoegd van de processen-verbaal, de verklaringen van getuigen of klagers en de verslagen van deskundigen die in het Frans zijn gesteld.

Iedere verdachte die alleen Frans en Duits of een van die talen verstaat, kan vorderen dat bij zijn dossier een Franse of een Duitse vertaling wordt gevoegd van genoemde stukken die in het Nederlands zijn gesteld.

Eveneens kan iedere verdachte die alleen Frans en Nederlands of een van die talen verstaat, vorderen dat bij zijn dossier een Franse of een Nederlandse vertaling wordt gevoegd van genoemde stukken die in het Duits zijn gesteld.

De verdachte zal, langs de griffie, zijn verzoekschrift aan den ambtenaar van het openbaar ministerie overmaken; het zal niet meer ontvankelijk zijn, na verloop van acht dagen volgende op de betekening, hetzij van het bevelschrift tot verwijzing naar het Hof van Assisen, hetzij van de dagvaarding om te verschijnen ter terechtzitting van de politierechtbank, van de militaire rechtbank of van de correctionele rechtbank zitting houdend in eerste aanleg.

Hetzelfde recht wordt erkend aan den verdachten, voor de rechtscolleges in hoger beroep, wat betreft de nieuwe over te leggen stukken.

De kosten van vertaling zijn ten laste der Schatkist."

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

There are no criteria, but the judge has to examine what the mother tongue of the suspect is and if translation is necessary. The suspect can also ask for translation and the judge decides whether it is necessary.

065 - More specifically, who decides whether translation is necessary?

the judge

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

it depends on which language it is.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. The documents that the suspect has to understand to have a fair trial have to be translated (art. 6.1 and 6.3.e European Treaty on human rights), ex. the charge, indictment, detention order, reasons for detention, judgements,...

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

Not an obligation provided for in the law, but in practice the information will be provided to the suspect in a language he understands.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

article 332 Procedural Penal Code:

"Ingeval de beschuldigde, de burgerlijke partij, de getuigen of een van hen niet dezelfde taal of hetzelfde idioom spreken, benoemt de voorzitter ambtshalve, op straffe van nietigheid, een tolk, ten minste eenentwintig jaar oud, en doet hem, eveneens op straffe van nietigheid, de eed afleggen dat hij trouw het gezegde zal vertalen, dat moet worden overgebracht aan degenen die een verschillende taal spreken.

De beschuldigde, de burgerlijke partij en de procureur-generaal kunnen de tolk wraken, op voorwaarde dat zij de reden van hun wraking opgeven.

Het hof doet uitspraak.

Zelfs met instemming van de beschuldigde, van de burgerlijke partij en van de procureur-generaal kan de tolk niet worden gekozen uit de getuigen, de rechters en de gezworenen, zulks op straffe van nietigheid."

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

There are no criteria, but everything said in a criminal proceeding will be interpreted if necessary.

075 - More specifically, who decides whether interpretation is necessary?

the judge

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

it depends on which language it is.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

a list of interpreters is kept

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

a list of interpreters is kept

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer -
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Article 333 Procedural Penal Code: "Indien de beschuldigde doofstom is en niet kan schrijven, benoemt de voorzitter ambtshalve tot zijn tolk de persoon die het meest gewoon is met hem om te gaan.

Hetzelfde geschiedt ten aanzien van een doofstomme getuige of van een doofstomme burgerlijke partij.

De overige bepalingen van het vorige artikel zijn van toepassing.

Ingeval de doofstomme kan schrijven, worden de tot hem gerichte vragen en opmerkingen door de griffier op schrift gesteld; zij worden overhandigd aan de beschuldigde, de burgerlijke partij of de getuige, die zijn antwoord of zijn verklaring schriftelijk geeft. De griffier leest alles voor."

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

not an obligation provided for in law, but in practice the interrogator or the judge have to examine what the mother tongue of the suspect is and if translation is necessary.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

not an obligation provided for in law, but in practice the information will be provided to the suspect in a language he understands.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁶

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

In case of an administrative arrest: article 33ter of the law on the fonction of the police:

“Elke bestuurlijke aangehouden persoon moet in kennis worden gesteld van:

- de vrijheidsberoving;
 - de redenen van de vrijheidsberoving;
 - de maximale duur van deze vrijheidsberoving;
 - de materiële procedure van de opsluiting;
 - de mogelijkheid tot het nemen van dwangmaatregelen.
- De in deze wet bedoelde rechten die uit de vrijheidsberoving voortvloeien worden hetzij mondeling hetzij schriftelijk en in een taal die hij begrijpt medegedeeld aan elke persoon die het voorwerp uitmaakt van een bestuurlijke aanhouding, en dit op het ogenblik dat de officier van bestuurlijke politie de vrijheidsberoving verricht of handhaaft.

- Deze kennisgeving wordt schriftelijk bevestigd in het register van de vrijheidsberovingen. De mededeling van de rechten van de aangehoudenen kan collectief georganiseerd worden mits deze procedure als dusdanig wordt opgenomen in het register.”

In case of a judicial arrest, article 16, §2, first and second part, §§ 5, 6 and 7, and article 18, §§1 and 2:

“Article 16. § 2. Tenzij de verdachte voortvluchtig is of zich verbergt, moet de onderzoeksrechter alvorens een bevel tot aanhouding te verlenen, de verdachte ondervragen over de feiten die aan de beschuldiging ten grondslag liggen en die aanleiding kunnen geven tot de afgifte van een bevel tot aanhouding en zijn opmerkingen horen. Bij ontstentenis van deze ondervraging, wordt de inverdenkinggestelde in vrijheid gesteld.

Hij moet de verdachte eveneens mededelen dat tegen hem een aanhoudingsbevel kan worden uitgevaardigd en hij moet hem in zijn opmerkingen ter zake horen. Bij ontstentenis van de naleving van deze voorwaarden, wordt de inverdenkinggestelde in vrijheid gesteld.”

“§ 5. Het bevel tot aanhouding bevat de opgave van het feit waarvoor het wordt verleend, vermeldt de wetsbepaling die bepaalt dat het feit een misdaad of een wanbedrijf is en stelt het bestaan vast van ernstige aanwijzingen van schuld.

De rechter vermeldt daarin de feitelijke omstandigheden van de zaak en die welke eigen zijn aan de persoonlijkheid van de verdachte, die de voorlopige hechtenis wettigen gezien de criteria bepaald in § 1. Bij ontstentenis van deze mededelingen, wordt de inverdenkinggestelde in vrijheid gesteld.

Het bevel tot aanhouding vermeldt eveneens dat de verdachte vooraf is gehoord.

§ 6. Het bevel wordt ondertekend door de rechter die het heeft verleend, en wordt met zijn zegel bekleed. Bij ontstentenis van de handtekening van de rechter, wordt de inverdenkinggestelde in vrijheid gesteld.

De verdachte wordt erin met name genoemd of zo duidelijk mogelijk aangewezen.

§ 7. Het proces-verbaal van het verhoor van de verdachte door de onderzoeksrechter, evenals alle processen-verbaal van de verhoren die van de verdachte werden afgenomen tussen het tijdstip van zijn

¹⁶ The term ‘charge’ in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

vrijheidsbeneming en het tijdstip waarop hij naar de onderzoeksrechter wordt verwezen, moeten het uur vermelden van het begin van de ondervraging, van het begin en het einde van de eventuele onderbrekingen en van het einde van de ondervraging.

"Article 18. § 1. Het bevel tot aanhouding wordt aan de verdachte betekend binnen vierentwintig uren te rekenen van de effectieve vrijheidsbeneming of, indien het bevel tot aanhouding verleend wordt tegen een verdachte die op grond van een bevel tot medebrenging reeds aangehouden is, te rekenen van de betekening van dit bevel.

De betekening geschiedt door de griffier van de onderzoeksrechter, door de directeur van een strafinrichting of door een agent van de openbare macht.

Ze bestaat in het mondeling meedelen van de beslissing in de taal van de rechtspleging, met afgifte van een volledig afschrift van de akte. Zelfs indien de verdachte zich reeds in hechtenis bevindt, wordt het bevel tot aanhouding hem vertoond en wordt hem daarvan afschrift gegeven.

Bij ontstentenis van regelmatige betekening binnen de wettelijke termijn, wordt de verdachte in vrijheid gesteld.

§ 2. Bij de betekening van het bevel tot aanhouding wordt aan de verdachte een afschrift overhandigd van het proces-verbaal van zijn verhoor door de onderzoeksrechter, alsmede een afschrift van de andere in artikel 16, § 7, bedoelde stukken.

Art. 61bis of the Code of Criminal procedure:

"De onderzoeksrechter gaat over tot de inverdenkingstelling van elke persoon tegen wie ernstige aanwijzingen van schuld bestaan. Deze inverdenkingstelling vindt plaats ter gelegenheid van een verhoor of door kennisgeving aan de betrokkene.

Dezelfde rechten als de inverdenkinggestelde geniet eenieder tegen wie de strafvordering wordt ingesteld in het kader van een gerechtelijk onderzoek."

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

See answer under question 087

089 - When does the duty to inform the suspect of this right arise for the first time?

Within [...] hours after arrest

See answer under question 087

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

See answer under question 087 + see also article 31 of the 'language law' of 15 June 1935 (this is a general article that is applicable throughout the whole criminal procedure, including the investigation):

"In al de ondervragingen van het opsporingsonderzoek en van het gerechtelijk onderzoek, alsmede voor de onderzoeks- en vonnisgerechten, gebruiken de partijen die persoonlijk verschijnen de taal van hun keuze voor al hun mondelinge verklaringen.

Wanneer de agenten die met het opsporingsonderzoek belast zijn, het parket, de onderzoeksrechter of de bovenvermelde rechtsmachten de door de partijen gebruikte taal niet kennen, doen zij een beroep op de medewerking van een beëdigd tolk.

De partijen die de taal van de procedure niet verstaan worden bijgestaan door een beëdigd tolk die alle mondelinge verklaringen vertaalt.

De kosten van vertaling zijn ten laste van de Schatkist.”

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

In case of an arrested suspect, see articles 18, §2 and 21, §3, of the law on pretrial detention:

“§ 2. Bij de betekening van het bevel tot aanhouding wordt aan de verdachte een afschrift overhandigd van het proces-verbaal van zijn verhoor door de onderzoeksrechter, alsmede een afschrift van de andere in artikel 16, § 7, bedoelde stukken.”

“Article 16, §7. Het proces-verbaal van het verhoor van de verdachte door de onderzoeksrechter, evenals alle processen-verbaal van de verhoren die van de verdachte werden afgenomen tussen het tijdstip van zijn vrijheidsbeneming en het tijdstip waarop hij naar de onderzoeksrechter wordt verwezen, moeten het uur vermelden van het begin van de ondervraging, van het begin en het einde van de eventuele onderbrekingen en van het einde van de ondervraging.”

Article 21, §3:

“3. Het dossier wordt gedurende de laatste werkdag vóór de verschijning ter beschikking gehouden van de verdachte en van zijn raadsman.

Deze terbeschikkingstelling aan de verdachte kan gebeuren in de vorm van afschriften die door de griffier voor eensluidend zijn verklaard.

Indien de voorafgaande dag geen werkdag is, wordt het dossier opnieuw te hunner beschikking gehouden gedurende de voormiddag van de dag van verschijning; in dat geval heeft de verschijning voor de raadkamer 's namiddags plaats.”

In case of a non arrested suspect, see article 61ter, §1, first part, Code of Criminal Procedure:

“§ 1. De niet aangehouden in verdenkinggestelde en de burgerlijke partij kunnen de onderzoeksrechter verzoeken om inzage van het dossier.”

+ In general, one should refer also to the article 125 of the Royal Decree holding the reglementation on the tariff of judicial expenses in criminal cases that foresees that the Procureur général can give permission to the copy of the judicial file (entirely or partially).

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

There is a fixed jurisprudence of the 'Cour de Cassation' that states that this right is fully part of the rights of defence as it constitutes a general principle of law.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

No.

100 - When does the duty to inform the suspect of this right arise?

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

See the articles 153 and 190 of the Code of Criminal Procedure:

Article 153. De behandeling van iedere zaak is openbaar, op straffe van nietigheid.

Zij geschiedt in de volgende orde :

De processen-verbaal, zo die er zijn, worden door de griffier voorgelezen;

De getuigen, indien het openbaar ministerie of de burgerlijke partij er heeft opgeroepen, worden gehoord zo daartoe grond bestaat; de burgerlijke partij neemt haar conclusie;

De gedaagde draagt of zijn advocaat zijn verdediging voor en doet zijn getuigen horen, indien hij er heeft meegebracht of doen dagvaarden en indien hij overeenkomstig het volgende artikel gerechtigd is om die voor te brengen;

Het openbaar ministerie vat de zaak samen en neemt zijn conclusie; de gedaagde partij of haar advocaat kan haar opmerkingen voordragen.

Article 195. De behandeling geschiedt in het openbaar, op straffe van nietigheid. Wanneer de vervolgingen zijn gegrond op de artikelen 372 tot 378 van het Strafwetboek, kan het vonnisgerecht bevelen dat de zaak met gesloten deuren wordt behandeld, indien een van de partijen of het slachtoffer het vraagt, namelijk met het oog op de bescherming van zijn persoonlijke levenssfeer.

De procureur des Konings, de burgerlijke partij of haar raadsman, zetten de zaak uiteen; de processen-verbaal of verslagen, indien er opgemaakt zijn, worden door de griffier voorgelezen, de getuigen voor en tegen worden gehoord, indien daartoe grond bestaat, en de wrakingen worden voorgedragen en er wordt over beslist; de stukken die tot overtuiging of tot ontlasting kunnen dienen, worden aan de getuigen en aan de partijen vertoond; de beklaagde wordt ondervraagd; de beklaagde en de burgerrechtelijk aansprakelijke personen of hun advocaat dragen hun verdediging voor; de procureur des Konings vat de zaak samen en neemt zijn conclusie; de beklaagde en de voor het misdrijf burgerrechtelijk aansprakelijke personen of hun advocaat kunnen antwoorden.

Het vonnis wordt onmiddellijk of ten laatste op de terechtzitting volgende op die waarop de debatten gesloten zijn verklaard, uitgesproken.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

BULGARIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁷

yes

Article 15, para 1 of the Criminal Procedure Code (CPC)

(1) The accused party shall enjoy the right of defence.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressly made waiver of this particular right.

Article 97, para 1 and 2 of the CPC

(1) The defence counsel can join criminal proceedings from the moment an individual is detained or has been constituted in the capacity of accused party.

According to Article 97, para 1 of the CPC, the right to contact a lawyer (legal representative) arises at the moment an individual is detained or has been constituted in the capacity of an accused party, taking into consideration, which of them occurs first.

(2) The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

Concerning the right to contact a lawyer (legal representative) in case of 24-hour police arrest, the matter is regulated in Art. 63, para 5 of the Ministry of Interior Act and Art. 14, para 1, point 2 of the Instruction No Iz-2451, dated 29.12.2006 on the course of action of the police on the detention procedure of persons at the structural units of the Ministry of Interior, the equipment and the order in the places for detention.

Art. 63(5) of the Ministry of Interior Act stipulates that from the moment of detention onwards, the person shall be entitled to a defence council.

The provision of Article 14, para 1, point 2 of the aforementioned Instruction sets forth that immediately after detention the person is informed on the grounds of detention, his legal responsibility and his right of legal assistance, including according to the provisions of the Legal Aid Act.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Article 97, para 1 and 2 of the CPC

¹⁷ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

(1) The defence counsel can join criminal proceedings from the moment an individual is detained or has been constituted in the capacity of accused party.

(2) The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

In writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Article 21, para 2 of the CPC

Persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

Article 63, para 3 of the Ministry of Interior Act

(3) If the person does not speak Bulgarian, he/she shall be notified without delay of the reasons for his detention in a language he/she understands.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Article 93

(1) The defence counsel shall be chosen and authorised by the accused party, except in the hypotheses herein provided for.

Article 94

(3) Where participation of a defence counsel is mandatory, the respective body shall appoint a lawyer as a defence counsel.

(4) The appointed defence counsel shall be removed from the criminal proceedings if the accused party authorises another defence counsel.

Article 96

(2) The replacement of a defence counsel by another may take place at the request or with consent of the accused party.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Article 33, para 3 of the Bar Act

Conferences between an attorney-at-law and his or her client shall not be intercepted and recorded. Any recordings, where available, shall not be used as means of evidence and shall be subject to immediate destruction.

Article 34, para 3 of the Bar Act

Conversation during meetings shall not be intercepted or recorded, however meetings may be subject to observation.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁸?

Yes.

Article 97, para 2 of the CPC

The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

¹⁸ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹⁹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Article 99, para 1 of the CPC

The defence counsel shall have the following rights: meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defence counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.

022 (Check any that apply)

If so, does this right cover:

a. questioning by the police - Yes.

b. questioning by the prosecutor - Yes.

c. questioning by the investigating judge -

d. questioning by other officials, please specify [...] - Yes. According to the Bulgarian legislation the questioning can also be conducted by an investigator, an investigating police officer in the pre-trial phase of the criminal proceedings or by a judge in the trial phase of the criminal proceedings.

Article 138 of the CPC – “Interrogation of the Accused Party”

(1) The interrogation of the accused party shall take place in daytime, except where it may suffer no delay.

(2) Before interrogation, the respective body shall establish the identity of the accused party.

(3) The interrogation of the accused shall begin with the question whether he or she understands the charges pressed against him/her, after which the accused party shall be asked to tell in the form of free narration, if he or she wishes, everything that he or she knows in relation to the case.

- (4) Questions may be put to the accused party for supplementing his/her explanations or for removing any omissions, ambiguities or contradictions.
- (5) The questions must be clear, concrete and relevant to the circumstances of the case. They should not suggest answers or lead to a particular answer.
- (6) Where several persons have been constituted as accused parties, the investigative body shall interrogate them separately.
- (7) The accused party shall not be interrogated by letter rogatory or through a video conference, except where he or she is outside the territory of the country and the interrogation will not obstruct discovery of the objective truth.

Article 221 of the CPC – “Interrogation of the Accused Party”

Following presentation of the decree for constitution of the accused party, the pre-trial body shall immediately proceed with the interrogation of the accused party in pursuance of Article 138.

Article 193 of the CPC – “Bodies of Pre-Trial Proceedings”

The prosecutor and the investigative bodies shall be the pre-trial bodies.

Article 277 of the CPC – “Interrogation of the Defendant”

- (1) The presiding judge shall ask the defendant to give explanations on the indictment.
- (2) The defendant may give explanations at any time of the judicial trial.
- (3) The defendant shall be asked questions, first by the prosecutor or the private complainant, the private prosecutor, the counsel thereof, the civil claimant and the counsel thereof, the civil respondent and the counsel thereof, the other defendants and their defence counsels, and by the defence counsel of the defendant.
- (4) The presiding judge and the members of the panel may question the defendant after the parties have finished with their questions.

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** - Yes. Article 99 of the CPC

(1) The defence counsel shall have the following rights: meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defence counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.

(2) Participation of a defence counsel shall not be an obstacle for the accused party to exercise his/her rights under Article 55 in person.

Article 277, para 3 of the CPC stipulates that in the trial phase of the criminal proceedings the defendant shall be asked questions, first by the prosecutor or the private complainant, the private prosecutor, the counsel thereof, the civil claimant and the counsel thereof, the civil respondent and the counsel thereof, the other defendants and their defence counsels, and by the defence counsel of the defendant.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Article 97, para 2 of the CPC

(2) The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Article 21, para 2 of the CPC

Persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

Article 142, para 1 of the CPC

Where the accused party does not speak the Bulgarian language, an interpreter shall be appointed.

Article 63, para 3 of the Ministry of Interior Act

If the person does not speak Bulgarian, he/she shall be notified without delay of the reasons for his detention in a language he/she understands.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Article 14, para 2 of the CPC

Evidence and the objective forms used to establish their existence may not have any value set in advance.

According to the provisions of the CPC, the only hypothesis when the confession, made by a suspect on the pre-trial phase of the criminal proceedings, can be used as evidence in court, is solely when it has been made in the same proceedings before a judge or before another court panel under the following circumstances:

Article 279, para 1 of the CPC

Depositions of the accused party or defendant given in the same case at the pre-trial proceedings before a judge or before another court panel, shall be read out where:

1. the defendant has died and the case has been allowed to progress with regard to the other defendants
2. the case is being tried in the absence of the defendant;
3. there is substantial contradiction between the explanations given at the pre-trial proceedings and those given at the judicial trial;
4. the defendant refuses to give explanations or alleges that he/she does not remember something.

The questioning before judge is conducted in accordance with Article 222 of the CPC:

(1) Should the pre-trial body deem it appropriate, the interrogation shall be made before a judge from the respective first instance court or the court in the area of which the action is taken with the participation of a defence counsel, if such is appointed. In this case the file is not presented to the judge.

(2) For the interrogation under paragraph (1) the respective body shall secure the appearance of the accused party and his defence counsel.

(3) Insofar as no special rules have been introduced, interrogation under paragraph 1 shall be conducted following the rules of judicial trial.

However, the questioning can not be made in the absence of a lawyer in the event of mandatory participation of a lawyer:

Article 94 of the CPC

(1) Participation of the defence counsel in criminal proceedings shall be mandatory in cases where:

1. The accused party is underage;
2. The accused party suffers from physical or mental deficiencies, which prevent him/her from proceeding at his/her own defence;
3. the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment;
4. The accused party does not have command of the Bulgarian language;
5. The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel;
6. (Amended, SG No. 109/2008) A request under Article 64 has been made or the accused party is detained;
7. Proceedings are conducted before the Supreme Court of Cassation;
8. The case is tried in the absence of the accused party;
9. The accused party cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Article 238 of the CPC

(1) At the request of the person interrogated or at the initiative of the pre-trial body, a sound recording may be made of which the person interrogated shall be informed prior to the beginning of interrogation.

(2) The sound recording shall contain the information indicated in Article 129, paragraph (1), and Article 237.

(3) The sound recording of part of the interrogation or the repetition, especially for the sound recording, of part of the interrogation, shall not be allowed.

(4) Upon completion of the interrogation the sound recording shall be played in full to the person interrogated. Additional explanations and testimonies shall also be reflected in the sound recording.

(5) The sound recording shall end with a declaration by the person interrogated that it reflects correctly the explanations and testimonies given thereby.

In addition to the questioning, made by the police, the following provision of the Instruction No Iz-2451, dated 29.12.2006 on the Course of Action of the Police on the Detention Procedure of Persons at the Structural Units of the Ministry of Interior, the Equipment and the Order in the Places for Detention is applied:

Article 76, para 1, point 4 of the Instruction

The rooms where the questioning is conducted are soundproof and are provided with guaranteed main and emergency lightening, and must respond to the following conditions:

...

4. are provided with equipment for conducting of fully electronic sound and video recording of the questioning of the questioned person, which is mandatorily used to control the keeping of the order and protection of his/her rights.

Article 76, para 2 of the Instruction

The sound and video recording of the conducted questioning have been maintained at the structural unit of the Ministry of Interior for a period of 30 days since they were conducted.

030 - If so, how many copies of the audio recording are made?

Article 239 of the CPC

(1) The investigative body shall draw up interrogation record also where a sound recording has been made.

(2) The record shall comprise: the major circumstances of the interrogation; the decision to make a sound recording; the notification of the person interrogated of the sound recording; the remarks made by the person interrogated in relation to the sound recording; the reproduction of the sound recording before the person interrogated and the statement of the pre-trial body and of the person interrogated as to the correctness of the sound recording.

(3) The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

(4) Breaking the seal of the sound recording for the needs of investigation shall be allowed only by authorisation of the prosecutor and in the presence of the person interrogated. While playing the sound recording, the person interrogated shall also be present.

(5) After hearing, the sound recording shall be sealed again, pursuant to paragraph (3).

031 - If so, who is entitled to receive a copy of the audio recording?

Article 239, para 3 of the CPC

The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Article 240 of the CPC

The provisions of Articles 237 -239 shall apply to making video recording, mutatis mutandis.

Article 238 of the CPC

(1) At the request of the person interrogated or at the initiative of the pre-trial body, a sound recording may be made of which the person interrogated shall be informed prior to the beginning of interrogation.

(2) The sound recording shall contain the information indicated in Article 129, paragraph (1), and Article 237.

(3) The sound recording of part of the interrogation or the repetition, especially for the sound recording, of part of the interrogation, shall not be allowed.

(4) Upon completion of the interrogation the sound recording shall be played in full to the person interrogated. Additional explanations and testimonies shall also be reflected in the sound recording.

(5) The sound recording shall end with a declaration by the person interrogated that it reflects correctly the explanations and testimonies given thereby.

In addition to the video recording, made by the police, the following provision of the Instruction No Iz-2451, dated 29.12.2006 on the Course of Action of the Police on the Detention Procedure of Persons at the Structural Units of the Ministry of Interior, the Equipment and the Order in the Places for Detention is applied:

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The rooms where the questioning is conducted are soundproof and are provided with guaranteed main and emergency lightening, and must respond to the following conditions:

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033 - If so, how many copies of the video recording are made?

Article 240 of the CPC

The provisions of Articles 237 -239 shall apply to making video recording, mutatis mutandis.

Article 239 of the CPC

(1)The investigative body shall draw up interrogation record also where a sound recording has been made.

(2) The record shall comprise: the major circumstances of the interrogation; the decision to make a sound recording; the notification of the person interrogated of the sound recording; the remarks made by the person interrogated in relation to the sound recording; the reproduction of the sound recording before the person interrogated and the statement of the pre-trial body and of the person interrogated as to the correctness of the sound recording.

(3) The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

(4) Breaking the seal of the sound recording for the needs of investigation shall be allowed only by authorisation of the prosecutor and in the presence of the person interrogated. While playing the sound recording, the person interrogated shall also be present.

(5)After hearing, the sound recording shall be sealed again, pursuant to paragraph (3).

034 - If so, who is entitled to receive a copy of the video recording?

Article 240 of the CPC

The provisions of Articles 237 -239 shall apply to making video recording, mutatis mutandis.

Article 239, para 3 of the CPC

The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Article 94 of the CPC

(1) Participation of the defence counsel in criminal proceedings shall be mandatory in cases where:

1. The accused party is underage;
2. The accused party suffers from physical or mental deficiencies, which prevent him/her from proceeding at his/her own defence;
3. the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment;

4. The accused party does not have command of the Bulgarian language;
5. The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel;
6. (Amended, SG No. 109/2008) A request under Article 64 has been made or the accused party is detained;
7. Proceedings are conducted before the Supreme Court of Cassation;
8. The case is tried in the absence of the accused party;
9. The accused party cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.

Article 1 of the Legal Aid Act

This Act shall regulate legal aid in criminal, civil and administrative matters before courts of all instances.

Article 2 of the Legal Aid Act

Legal aid under this Act shall be provided by lawyers and shall be financed by the State.

Article 23 of the Legal Aid Act

(1) The legal aid system referred to in Item 3 of Article 21 herein shall cover the cases in which defence or representation by legal counsel is mandatory as provided by virtue of statute.

(2) The legal aid system shall furthermore cover the cases in which a suspect, an accused, a person incriminated, a defendant, or a party to a criminal, civil or administrative case is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this.

(3) In criminal matters, the assessment that the suspect, the accused, the person incriminated or the defendant is unable to pay for the assistance of a lawyer shall be made by the authority who directs the procedural acts, on the basis of the property status of the person as established in the specific case.

2.1 Criteria

**Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?
More specifically,**

036 - Is there a merits test²⁰?

Yes.

Article 94 of the CPC

(1) Participation of the defence counsel in criminal proceedings shall be mandatory in cases where:

1. The accused party is underage;
2. The accused party suffers from physical or mental deficiencies, which prevent him/her from proceeding at his/her own defence;
3. the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment;
4. The accused party does not have command of the Bulgarian language;
5. The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel;

²⁰ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

6. (Amended, SG No. 109/2008) A request under Article 64 has been made or the accused party is detained;
7. Proceedings are conducted before the Supreme Court of Cassation;
8. The case is tried in the absence of the accused party;
9. The accused party cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.

037 - Is there a means test²¹?

No.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms -
- b. any rules on what documentation should be provided, please specify rules [...] -
- c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Article 97, para 2 of the CPC

(2) The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

²¹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Article 21, para 2 of the CPC

Persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

Article 63, para 3 of the Ministry of Interior Act

If the person does not speak Bulgarian, he/she shall be notified without delay of the reasons for his detention in a language he/she understands.

044 (Check any that apply)

Who decides on the request for legal assistance?

a. police - Yes.

b. prosecutor - Yes.

c. judge - Yes.

d. legal aid board -

e. other authority, please specify authority [...] Yes. According to the Bulgarian legislation, the decision to grant legal aid shall be made by the authority directing the procedural acts, which authority in the pre-trial phase can also be an investigator or an investigating police officer.

Article 25, para 1 of the Legal Aid Act

In the cases referred to in Items 3 and 4 of Article 21 herein, the decision to grant legal aid shall be made by the authority directing the procedural acts, at the request of the person concerned or by virtue of the law. A refusal to grant legal aid shall be reasoned.

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal against acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressively made waiver of this particular right.

Article 200 of the CPC

Decrees of investigative bodies shall be appealed before the prosecutor. Decrees of the prosecutor, that are not subject to judicial review, shall be appealed before a prosecutor with a higher-standing prosecution office whose decree shall not be subject to further appeal.

Article 201 of the CPC

(1) Appeals against decrees of pre-trial bodies may be oral or in writing. Appeals in writing must be signed by the appellant, and for oral appeals record shall be drawn up, which shall be signed by the appellant and by the person who receives it.

(2) Appeals shall be filed through the body which has issued the decree, or directly to the prosecutor competent to examine it. In the former case the appeals shall be forwarded immediately to the respective prosecutor accompanied with written observations.

Article 202 of the CPC

(1) Appeals shall not stay the execution of the appealed decree, unless the respective prosecutor has ruled otherwise.

(2) The prosecutor shall be obligated to make a pronouncement on any appeal within three days following its receipt.

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] - Yes. Article 18 of the Legal Aid Act

The Bar Councils shall organize the grant of legal aid within the respective geographical jurisdiction and, to this end:

...

3. according to Article 25 (4) and (5) herein, shall designate a lawyer of the Bar Association, entered in the National Legal Aid Register, for implementation of the legal aid, making sure that the professional experience and qualifications of the said lawyer are suitable for the type, the factual and legal complexity of the case, other appointments according to the procedure established by this Act, and the caseload of the said lawyer;

Article 25, para 4 and 5 of the Legal Aid Act

The instrument on granting of legal aid shall be transmitted forthwith to the relevant Bar Council for designation of a lawyer entered in the National Legal Aid Register.

If possible, the Bar Council shall designate a lawyer named by the person whereto legal aid is granted.

c.

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per phase of the proceedings.

Art. 8 of the Ordinance for the Payment of Legal Support

The remunerations specified in the Ordinance are consistent with the legal services and have a defined minimum and maximum amount.

Art. 13 of the Ordinance for the Payment of Legal Support

The remunerations for legal services under Art 21, it. 1 and 2 of the LLS are:

1. Consultation with the purpose of reaching a settlement before initiation of court procedures or filing a case – from BGN 10 to 20;
2. For a preparation of the documents for filing a case – from BGN 15 to 30.

Art. 14 of the Ordinance for the Payment of Legal Support

- (1) The remunerations for legal services under Art. 28 of the ALA are from BGN 60 to 120.
- (2) For legal services under Para 1, provided on non-working days or holidays, the remuneration may be increased by up to 50 per cent.

Art. 15 of the Ordinance for the Payment of Legal Support

For cases where a penalty probation or fee for the offence is provisioned, the remuneration is:

1. For the pre-trial stage – from BGN 50 to 100;
2. For every judicial instance – from BGN 60 to 120.

Art. 16 of the Ordinance for the Payment of Legal Support

For cases where penalty of five years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 75 to 150;
2. For every judicial instance – from BGN 100 to 200.

Art. 17 of the Ordinance for the Payment of Legal Support

For cases where a penalty of 10 years of imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 100 to 200 ;
2. For every judicial instance – from BGN 150 to 300 .

Art. 18 of the Ordinance for the Payment of Legal Support

For cases where a penalty of up to 15 years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage– from BGN 150 to 230;
2. For every judicial instance – from BGN 250 to 500.

Art. 19 of the Ordinance for the Payment of Legal Support

For cases where a penalty of over 15 years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 200 to 40
2. For every judicial instance – from BGN 400 to 800

Art. 20 of the Ordinance for the Payment of Legal Support

For cases where a penalty of life imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 300 to 500;
2. For every judicial instance – from BGN 500 to 1000.

Art. 21 of the Ordinance for the Payment of Legal Support

In case of agreement, when the attorney has not participated in the penalty proceedings, the remuneration is from BGN 80 to 120.

Art. 22 of the Ordinance for the Payment of Legal Support

In cases of enforced medical treatment the remuneration is from BGN 80 to 120.

Litigation representation in civil and administrative cases

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Art. 8 of the Ordinance for the Payment of Legal Support

The remunerations specified in the Ordinance are consistent with the legal services and have a defined minimum and maximum amount.

Art. 13 of the Ordinance for the Payment of Legal Support

The remunerations for legal services under Art 21, it. 1 and 2 of the LLS are:

1. Consultation with the purpose of reaching a settlement before initiation of court procedures or filing a case – from BGN 10 to 20;
2. For a preparation of the documents for filing a case – from BGN 15 to 30.

Art. 14 of the Ordinance for the Payment of Legal Support

(1) The remunerations for legal services under Art. 28 of the ALA are from BGN 60 to 120.

(2) For legal services under Para 1, provided on non-working days or holidays, the remuneration may be increased by up to 50 per cent.

Art. 15 of the Ordinance for the Payment of Legal Support

For cases where a penalty probation or fee for the offence is provisioned, the remuneration is:

1. For the pre-trial stage – from BGN 50 to 100;
2. For every judicial instance – from BGN 60 to 120.

Art. 16 of the Ordinance for the Payment of Legal Support

For cases where penalty of five years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 75 to 150;
2. For every judicial instance – from BGN 100 to 200.

Art. 17 of the Ordinance for the Payment of Legal Support

For cases where a penalty of 10 years of imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 100 to 200 ;
2. For every judicial instance – from BGN 150 to 300 .

Art. 18 of the Ordinance for the Payment of Legal Support

For cases where a penalty of up to 15 years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage– from BGN 150 to 230;
2. For every judicial instance – from BGN 250 to 500.

Art. 19 of the Ordinance for the Payment of Legal Support

For cases where a penalty of over 15 years imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 200 to 40
2. For every judicial instance – from BGN 400 to 800

Art. 20 of the Ordinance for the Payment of Legal Support

For cases where a penalty of life imprisonment is provisioned for the offence, the remuneration is:

1. For the pre-trial stage – from BGN 300 to 500;
2. For every judicial instance – from BGN 500 to 1000.

Art. 21 of the Ordinance for the Payment of Legal Support

In case of agreement, when the attorney has not participated in the penalty proceedings, the remuneration is from BGN 80 to 120.

Art. 22 of the Ordinance for the Payment of Legal Support

In cases of enforced medical treatment the remuneration is from BGN 80 to 120.

Litigation representation in civil and administrative cases

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

National Currency: BGN

1EUR = 1.95583 BGN, according to the rates of the Bulgarian National Bank

6 369 010 BGN, according to the Report of the National Bureau of Legal Aid for 2008

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

National Currency: BGN

1EUR = 1.95583 BGN, according to the rates of the Bulgarian National Bank

There is no data on the total criminal justice budget.

The total budget of the National Bureau of Legal Aid for 2008 is 9 566 480 BGN.

055 - What is the size of the population of your country?

7 606 551 persons in the end of 2008

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Article 18 of the Legal Aid Act

The Bar Councils shall organize the grant of legal aid within the respective geographical jurisdiction and, to this end:

...

3. according to Article 25 (4) and (5) herein, shall designate a lawyer of the Bar Association, entered in the National Legal Aid Register, for implementation of the legal aid, making sure that the professional experience and qualifications of the said lawyer are suitable for the type, the factual and legal complexity of the case, other appointments according to the procedure established by this Act, and the caseload of the said lawyer;

Article 25, para 4 of the Legal Aid Act

The instrument on granting of legal aid shall be transmitted forthwith to the relevant Bar Council for designation of a lawyer entered in the National Legal Aid Register.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?
Yes.

058 *(Check any that apply)*

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board - Yes.
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...]-

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence²²?

Yes.

060 *(Check any that apply)*

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect²³ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case - Yes.
- f. legal complexity of the case - Yes.
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. Article 94 of the CPC

(1) Participation of the defence counsel in criminal proceedings shall be mandatory in cases where:

...

4. The accused party does not have command of the Bulgarian language;

5. The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel;

...

8. The case is tried in the absence of the accused party;

9. The accused party cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

Article 2 of the Legal Aid Act

Legal aid under this Act shall be provided by lawyers and shall be financed by the State.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

²² Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

²³ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

No.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

067 - Are there any standard fees for legal translation of documents?

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 21, para 2 of the CPC

Persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

Article 142, para 1 of the CPC

Where the accused party does not speak the Bulgarian language, an interpreter shall be appointed.

Article 63, para 3 of the Ministry of Interior Act

If the person does not speak Bulgarian, he/she shall be notified without delay of the reasons for his detention in a language he/she understands.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer -
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.

d. other procedural occasions/activities/hearings, please specify [...] - Yes. According to Article 21, para 2 of the CPC, persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

The provision of the law ensures that the interpreter is present at any procedural occasion, involving the suspect.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Article 14 of the CPC

(1) Where the accused party does not speak the Bulgarian language, an interpreter shall be appointed.

(2) Persons indicated under Article 148, paragraph (1), items 1 - 3, may not be interpreters.

(3) For failure to appear or refusal to fulfil the work assigned, interpreters shall be held liable pursuant to Article 149, paragraph (5).

(4) Where the accused party is deaf or dumb, a sign language interpreter shall be appointed.

(5) The provisions of paragraphs (2) and (3) shall also apply to sign language interpreters.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally -

b. in writing -

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge²⁴

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressly made waiver of this particular right.

Article 219, para.4-7 of the CPC

(4) The investigative body shall present the decree for constitution to the accused party and his/her defence counsel, allowing them to gain knowledge of its full content and, where needed, giving additional explanations. The investigative body shall serve against a signature a copy of the decree on the accused party.

(5) Where the accused party has not authorised a defence counsel and request to organise his/her defence, the investigative body shall postpone the presentation of the decree for constitution and the interrogation of the accused party for a period of up to 72 hours, issuing summons anew.

(6) If the accused party again appears without defence counsel, the investigative body shall present him/her with the decree for constitution, appointing him a defence counsel in cases under Article 94, para 1.

(7) The investigative body may not take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

Article 254 para.1 of the CPC

At the order of the judge-rapporteur a copy of the indictment shall be served on the defendant.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

²⁴ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 219 of the CPC

(1) Where sufficient evidence is collected for the guilt of a certain individual in the perpetration of a publicly actionable criminal offence, and none of the grounds for terminating criminal proceedings are present, the investigative body shall report to the prosecutor and issue a decree to constitute the person as accused party.

(2) The investigative body may also constitute the accused party in this particular capacity upon drafting the act for the first investigative action against him/her, of which it shall report to the prosecutor.

(3) In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

1. The date and location of issuance;
2. The issuing body;
3. The full name of the individual constituted as accused party, the offence on account of which he/she is constituted and its legal qualification;
4. Evidence on which such constitution is based, provided this will not obstruct the investigation;
5. The remand measure, if one is imposed;
6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

(4) The investigative body shall present the decree for constitution to the accused party and his/her defence counsel, allowing them to gain knowledge of its full content and, where needed, giving additional explanations. The investigative body shall serve against a signature a copy of the decree on the accused party.

(5) Where the accused party has not authorised a defence counsel and request to organise his/her defence, the investigative body shall postpone the presentation of the decree for constitution and the interrogation of the accused party for a period of up to 72 hours, issuing summons anew.

(6) If the accused party again appears without defence counsel, the investigative body shall present him/her with the decree for constitution, appointing him a defence counsel in cases under Article 94, para 1.

(7) The investigative body may not take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

According to Article 21, para 2 of the CPC, persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

The provision of the law ensures that the interpreter is present at any procedural occasion, involving the suspect.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressly made waiver of this particular right.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

According to Article 21, para 2 of the CPC, persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

The provision of the law ensures that the interpreter is present at any procedural occasion, involving the suspect.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressly made waiver of this particular right.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

101 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

According to Article 21, para 2 of the CPC, persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Article 55, para 1 of the CPC

The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressly made waiver of this particular right.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 219, para 3 of the CPC

In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

...

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

Article 219, para 7 of the CPC

The investigative body cannot take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

106 *(Check any that apply)*

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

According to Article 21, para 2 of the CPC, persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

The aforementioned framework Decision is still not implemented in the Bulgarian legislation. Nevertheless, certain steps in this direction have been made and according to the draft proposal for a legal act, the basic procedural rights will be applicable to these proceedings.

The answers to questions 112 - 115 have been filled in only in order to proceed with the questionnaire.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

The aforementioned framework Decision is still not implemented in the Bulgarian legislation.

Nevertheless, certain steps in this direction have been made and according to the draft proposal for a legal act, the basic procedural rights will be applicable to these proceedings.

The answers to questions 120 - 123 have been filled in only in order to complete the questionnaire.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

CYPRUS

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?²⁵

yes

According to Article 12 paragraph 5 of the Constitution of Cyprus:

"Every person charged with an offence has the following minimum rights:(c)to defend himself in person or through a lawyer of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given free legal assistance when the interests of justice so require".

Also, according to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(d) to have a lawyer of his own choice and to have free legal assistance where the interests of justice so require and as provided by law".

Furthermore, according to Article 13 of the Criminal Procedure - Cap 155:

"Any person arrested and taken to police station or placed for reception of arrested persons "while in custody shall be given reasonable facilities for obtaining legal advice for taking steps to obtain bail and otherwise for making arrangements for his defence or release".

Moreover, according to Article 64 paragraph 1 of the Criminal Procedure - Cap 155:

" The Court, before which an accused is to be tried upon a charge or information or on the hearing of an appeal from a judgment of an Assize Court, may assign an advocate to defend the accused or the appellant, as the case may be, if the gravity, difficulty or other circumstances of the case make it desirable in the interests of justice".

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

The Articles that are referred in question 2 above must be mentioned to any person at the time of his arrest and at the time who is present before the Court.

Also. according to Article 7 of the Law 163(I)/2005 which provides for the rights of persons arrested and are in custody, the suspect must be informed of this rights, including his right to contact a lawyer.

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

At the time of his arrest and at the time who is present before the Court.

²⁵ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Also, according to Article 18 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed of his rights, including the right to contact a lawyer, in a language he understands.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Articles 12 paragraph 5 and 30 paragraph 3 of the Constitution of Cyprus and Article 13 of the Criminal Procedure - Cap. 155, all mentioned above.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

According to Articles 12, 13 and 14 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect can consult and discuss with his lawyer and this discussion is confidential and out of hearing of third parties and without its contents being monitored by any technical means.

012 - Consultation (in person or by telephone) is possible before questioning by the police²⁶?

Yes.

According to Article 3 of the Law providing for the rights of persons in custody, the suspect immediately after his arrest can communicate with a lawyer of his own choice without other person to be present.

²⁶ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

Yes.

According to Article 12 of the Law 163(I)/2005 providing for the rights of persons in custody, the Director of the Police Station or the personnel of the Police Station must not hinder or restrain this right.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison²⁷?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

According to Article 12 of the Law 163(I)/2005 providing for the rights of persons in custody, the Director of the Prisons or the personnel of the prisons must not hinder or restrain this right.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

The Head of the Prisons.

²⁷ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020b - Please specify, on which grounds surveillance can be ordered:

According to Article 15 of the Law 163(I)/2005 which provides for the rights of persons in custody, surveillance can be ordered in exceptional circumstances when it is deemed by a justifiable reason that an illegal object is enclosed in the envelope.

020c - Please specify, for which period of time surveillance can be ordered:

No period of time is specified.

020d - Please specify, the kind of surveillance that can be ordered:

The envelope is opened and is checked by the Police Officers or the staff of the Prisons respectively in the presence of the suspect.

020e - Please specify, any legal remedies provided to the defence in this respect:

No remedies provided.

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

The lawyer has the right to be present when questioning the suspect (Articles 12 paragraph 5 and 30 paragraph 3 of the Constitution of Cyprus and Article 13 of the Criminal Procedure - Cap. 155, all mentioned above)

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] - Yes. Anyone official, whatever the case may be.

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions -
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Articles 12 paragraph 5 and 30 paragraph 3 of the Constitution of Cyprus and Article 13 of the Criminal Procedure - Cap. 155, all mentioned above.

Also, according to Article 7 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed of his rights, including his right to have a lawyer present during questioning.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Also, according to Article 18 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed of his rights, including the right to have a lawyer present during questioning, in a language he understands.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

It is left to the faculty of the judge to decide the evidential value of the confession, having in mind all the other circumstances of the case.

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Articles 3-6A of the Legal Aid Law (Law No. 165(I)/2002, as amended) -

(a) Criminal proceedings before the District Court, the Tribunal Court, the Military Court and the Supreme Court.

(b) Civil and criminal proceedings for specific violations of human rights.

(c) Proceedings before the Family Court in relation to matters of family relations, parental responsibility, alimony, recognition of child, adoption, property relations of spouses and any other dispute in the marriage or in the family; and

(d) cross-border disputes.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge? More specifically,

036 - Is there a merits test²⁸?

Yes.

According to Articles 12(5)(c) and 30(3)(d) of the Constitution of Cyprus (Articles mentioned above) and Article 7(1)(b) of the Legal Aid Law.

037 - Is there a means test²⁹?

Yes.

Article 7(1)(a) of the Legal Aid Law.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms - Yes.

b. any rules on what documentation should be provided, please specify rules [...] Yes. Article 7(1)(a) of the Legal Aid Law.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

Article 64(1) of the Criminal Procedure-Cap 155 and Article 7(1)(b) of the Legal Aid Law - the gravity, difficulty or other circumstances of the case.

²⁸ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

²⁹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Articles 12(5)(c) and 30(3)(d) of the Cyprus Constitution.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

The Articles that are referred in question 40(a) above must be mentioned to any person at the time of his arrest and at the time who is present before the Court.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

A right of appeal against a decision for not issuing a certificate for legal aid exists, on the basis of the basic rule, that all decisions of the courts are subject to appeal.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Articles 10 and 11 of the Legal Aid Law - The lawyer is chosen by the person entitled to legal aid from a list of lawyers who are willing to offer their services. In the case where the person entitled to legal aid does not indicate a lawyer of his own choice, the Court that issues the certificate of legal aid calls this person to choose a lawyer of his/her preference from the list of lawyers, interested to offer their services within the framework of the institution of legal aid, prepared by the Cyprus Bar Association.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...] - Yes. See answer 47d above.

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

The Supreme Court issued Procedural Regulations and defined the levels of payment, the expenditure and other expenses that must be paid.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

See answer 50d above.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

Euros 232,300.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Not applicable.

055 - What is the size of the population of your country?

About 800.000 persons

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

A lawyer must be registered in the catalogue of the lawyers willing to offer their services for legal assistance.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence³⁰?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect³¹ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] -

- Yes. According to Article 64 of the Criminal Procedure - Cap.155:"The Court may assign an advocate to defend the accused or the appellant, as the case may be, if the gravity, difficulty or other circumstances of the case make it desirable in the interests of justice". It was obligatory only when the undefended person was tried for an offence punishable with death, but this provision was abolished, since the death penalty was abolished.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

The costs are calculated by the Court minimum cost scales.

³⁰ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

³¹ Blindness, deafness et cetera.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

The Attorney General of the Republic can be appointed as amicus curiae, when the interests of justice so require, in order to help the judge to the case.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Article 7 paragraphs (1), (2) and (3) of the Law 163(I)/2005 which provides for the rights of persons in custody.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

These are the standard fees that apply to any documents translation.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

a. the charge -

b. the indictment -

c. the detention order -

d. the reasons for detention -

e. the final judgment -

f. parts of the case file -

g. the letter of rights -

h. other documents, please specify [...] - Yes. The suspect has the right to be provided by an oral translation of all the written documents and the oral procedure.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

The duty to inform the suspect of this right arise at the time of his arrest and at the time who is present before the Court.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

See answer 63a above.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

The accused person informs personally or through his/her lawyer the judge that he cannot speak or understand the language used in Court and the judge suspends the procedure and give instructions for an interpreter to come in Court and assist the accused.

075 - More specifically, who decides whether interpretation is necessary?

See answer 74a above.

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

These are the standard fees that apply for any interpretation provided.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Articles 7 and 8 of the Law 163(I)/2005 that provides for the rights of prsons in custody. The procedure is that the suspect informs the policemen that he cannot speak or understand the language used in questioning and they provide him with an interpreter.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer** - Yes.
- b. the questioning of the suspect by the police** - Yes.
- c. the trial** - Yes.
- d. other procedural occasions/activities/hearings, please specify [...]** - Yes. At all the stages of the proceedings.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

In the case of person that has any intellectual insufficiency or bodily infirmity, are ensured to him the services of person that can transport the information in the language the suspect/accused understands - Article 7 of the Law that provides for the rights of persons in custody.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

See answer 81a above.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Further, according to Article 7 of the Law that provides for the rights of persons in custody.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

The duty to inform the suspect arises at the time of his arrest and at the time who is present before the Court.

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Further, according to Article 7 of the Law that provides for the rights of persons in custody.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge³²

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

According to Article 9 paragraph (3) of the Criminal Procedure - Cap.155:

"Except when the person arrested is in the actual course of the commission of an offence or is pursued immediately after the commission of an offence or escapes from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest".

Further, according to Article 13 of the Criminal Procedure - Cap. 155:

"Any person who is arrested, whether with or without a warrant, shall be taken with all reasonable despatch to a police station or other place for the reception of arrested persons and shall, without delay, be informed of the charge against him".

The above mentioned are also met in Article 7 of the Law 163(I)/2005 which provides for the rights of arrested persons who are in custody.

Furthermore, according to Article 12 paragraph (5)(a) of the Constitution:

"Every person charged with an offence has the following minimum rights: to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him".

According to Article 30 paragraph (3)(a) of the Constitution:

"Every person has the right to be informed of the reasons why he is required to appear before the court".

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

See answer 87a above.

Also, Article 9 of the Law 163(I)/2005 which provides for the rights of the persons arrested and are in custody.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

See answer 87a above.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

³² The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

The above mentioned are also met in Article 7 of the Law 163(I)/2005 which provides for the rights of arrested persons who are in custody.

All the above mentioned Articles apply to all the stages of the procedure, from the beginning (arrest) till the procedure before the court.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

According to Article 7 of the Criminal Procedure - Cap.155, the suspect has the right to make a written request to the prosecution to ask to be provided with copies of the file of the criminal investigation.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

At the time he is informed of his legal rights, he is also informed for this right, as well.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The duty to inform the suspect arises at the time of his arrest and at the time who is present before the Court.

095 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Also, according to Article 18 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed for his rights in a language he understands.

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] - Yes. According to Article 7 of the Criminal Procedure - Cap.155, the suspect has the right to make a written request to the prosecution to ask to be provided with copies of the file of the criminal investigation (testimonies and documents concerning the case).

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

This right is based in case law.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

According to Article 7 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed of his rights, including his right to remain silent.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The duty to inform the suspect arises at the time of his arrest and at the time who is present before the Court.

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

According to Article 12 paragraph 5 of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

Also, according to Article 18 of the Law 163(I)/2005 which provides for the rights of persons in custody, the suspect must be informed of his rights in a language he understands.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

According to Article 12 paragraph (5)(d) of the Cyprus Constitution:

"Every person charged with an offence has the following minimum rights:

to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

Also, according to Article 30 paragraph (3)(c):

"Every person has the right:

to adduce or cause to be adduced his evidence and to examine witnesses according to law".

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

The suspect is informed by the Court at the beginning of the procedure all his rights, including the right to call and examine witnesses/experts.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

See answer 104a. above.

106 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

According to Article 18 of the Law 163(I)/2005 providing for the rights of the persons in custody, the suspect must be informed of his rights in a language that he understands. Also, this right is referred to Article 7 of the same law.

Also, this is a general rule applying at the beginning until the end of the procedure.

According to Article 12 paragraph (5) of the Constitution:

"Every person charged with an offence has the following minimum rights:

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court".

According to Article 30 paragraph 3 of the Constitution:

"Every person has the right

(e) to have free assistance of an interpreter if he cannot understand or speak the language used in court".

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

CZECH REPUBLIC

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?³³

yes

Section 33 Para 1 of the Code of the Criminal Procedure (Act No. 141/1961 Coll., as amended, hereinafter called CCP): The charged person has a right to choose a defence counsel.

Section 76 Para 6 CCP: The detained suspected person has a right to choose a defence counsel.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence and about the fact that he/she may also choose the counsel; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 33 Para 5 CCP: All the authorities responsible for criminal proceedings are always obliged to advise the charged person of his/her rights and provide him a full opportunity to claim such rights.

Section 76 Para 6 CCP: It is necessary to advise the suspect of these rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 76 Para 5 CCP:

Section 33 Para 1 has to be reasonably taken care of even when the detained person is being questioned also before the charge.

³³ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

Section 76 Para 6 CCP: The detained suspected person, who has a right to choose a defense counsel, has to be advised of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Both orally and in writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Section 33 Para 1 CCP: The charged person has a right to choose a defence counsel.

Section 76 Para 6 CCP: The suspected detained person has a right to choose a defence counsel.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has a right to choose a defence counsel.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Section 33 Para 1 CCP: If the charged person is placed in custody or service of a term of imprisonment, he/she may speak to the counsel without presence of a third person. The said rights belong to the charged person even if he/she has been deprived of legal capacity, or his/her legal capacity has been limited.

Section 76 Para 6 CCP: The detained suspected person has a right to choose a defence counsellor, talk to him/her without the presence of a third person during the detention.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

012 - Consultation (in person or by telephone) is possible before questioning by the police³⁴?

Yes.

Section 158 Para 4 CCP: Everyone has a right to legal advice of a defence counsel when giving explanation.

Section 76 Para 6 CCP: The detained suspected person has a right to choose the defence counsellor, talk to him/her without the presence of a third person during the detention; has a right to request presence of his/her defence counsellor during the questioning according to Para 3 unless the defence counsellor is not available within the period referred to in Para 4.

Section 33 Para 1 CCP: The charged person has the right to choose a counsel and consult him/her even during the acts performed by the authority responsible for criminal prosecution. However, the charged person during his/her examination cannot consult the counsel about how he/she should answer a question that has been asked already. The charged person may ask to be examined in the presence of his/her counsel and the charged person may apply for participation of his/her counsel in other acts within the pre-trial proceedings, too (Section 165 CCP).

Section 165 Para 2 CCP: The defence counsel shall be already from the beginning of the criminal prosecution entitled to be present at the investigative acts, the result of which may be used as an evidence in the proceedings at the court, unless the performance of such act cannot be postponed, and notice about the same delivered.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison³⁵?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

³⁴ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

³⁵ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Section 158 Para 4 CCP: Everyone has a right to legal advice of a defence counsel when giving explanation.

Section 33 Para 1 CCP: The charged person has the right to choose a counsel and consult him/her even during the acts performed by the authority responsible for criminal prosecution. The charged person may ask to be examined in the presence of his/her counsel and the charged person may apply for participation of his/her counsel in other acts within the pre-trial proceedings, too (Section 165 CCP).

Section 76 Para 6 CCP: The detained suspected person has a right to request presence of his/her defence counsel during the questioning according to Para 3 unless the defence counsel is not available within the period referred to in Para 4.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

Section 41 Para 3 CCP: The defence counsel is authorised to be present at all acts before the court where the charged person may be present.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** - Yes. Section 41 CCP: The right since the pre-trial proceedings to make on behalf of his client proposals, requests and appeals; to inspect the file; to be present at the investigative acts; to be present at all acts where the accused can be present before the court; the right to ask for the copy or the transcript of written protocol of any acts of criminal proceedings within all stages of criminal process.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence and about the fact that he/she may also choose the counsel; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 76 Para 5 CCP:

Section 33 Para 1 has to be reasonably taken care of even when the detained person is being questioned also before the charge.

Section 76 Para 6 CCP: The detained suspected person, who has a right to choose a defense counsel, talk to him/her without presence of a third person and consult with him/her already during the detention; has also the right to request his/her presence during the questioning according to Para 3 unless the counsel is unavailable within the time limit referred to in Para 4. The suspect has to be advised of these rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights - Yes.

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Such confession has no specifics.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Whether the questioning is audio recorded depends on the decision and consideration of a competent authority.

030 - If so, how many copies of the audio recording are made?

It depends on a case-by-case basis how many copies the entitled persons wish to make.

031 - If so, who is entitled to receive a copy of the audio recording?

Anybody who is entitled to see the official documentation.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Whether the questioning is video recorded depends on the decision and consideration of a competent authority.

033 - If so, how many copies of the video recording are made?

It depends on a case-by-case basis how many copies the entitled persons wish to make.

034 - If so, who is entitled to receive a copy of the video recording?

Anybody who is entitled to see the official documentation.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Section 33 Para 2 CCP: If the charged person attests to have not money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge shall determine that the charged person is entitled to free defence or defence for reduced fee. If from the gathered evidence follows that the charged person does not have money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge on the request of the public prosecutor may if it is necessary for the protection of the rights of the accused decide on the entitlement to the free defence or defence for reduced fee also without the proposal of the charged person. In such event the defence cost shall be paid, either fully or in part, by the state. Pursuant to Section 33 Para 3 CCP proposal for the decision according to Para 2 are entitled to submit except the charged person and his/her defence counsel also persons listed in Section 37 Para 1 CCP.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test³⁶?

Yes.

Section 33 Para 5 CCP: All the authorities responsible for criminal proceedings are always obliged to advise the charged person of his/her rights and provide him a full opportunity to claim such rights.

Section 33 Para 2 CCP: If the charged person attests to have not money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge shall determine that the charged person is entitled to free defence or defence for reduced fee. If from the gathered evidence follows that the charged person does not have money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge on the request of the public prosecutor may if it is necessary for the protection of the rights of the accused decide on the entitlement to the free defence or defence for reduced fee also without the proposal of the charged person. In such event the defence cost shall be paid, either fully or in part, by the state. Pursuant to Section 33 Para 3 CCP proposal for the decision according to Para 2 are entitled to submit except the charged person and his/her defence counsel also persons listed in Section 37 Para 1 CCP.

037 - Is there a means test³⁷?

Yes.

Section 33 Para 2 CCP: If the charged person attests to have not money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge shall determine that the charged person is entitled to free defence or defence for reduced fee. If from the gathered evidence follows that the charged person does not have money enough to pay the defence cost, the presiding judge and in pre-trial

³⁶ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

³⁷ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

proceedings the judge on the request of the public prosecutor may if it is necessary for the protection of the rights of the accused decide on the entitlement to the free defence or defence for reduced fee also without the proposal of the charged person. In such event the defence cost shall be paid, either fully or in part, by the state.

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms -

b. any rules on what documentation should be provided, please specify rules [...] Yes. Pursuant to Section 33 Para CCP the charged person attests to have not money enough to pay the defence cost. This attestation is done via submitting needed documents such as e.g. certificate that he/she is registered in the register of job applicants; certificate that he/she is receiving relief in unemployment; certificate from the municipality where he/she has a permanent place of residence that he/she does not own any property which could be used for covering costs for the defence; declaration of taxes if he/she submits it; extract from the bank account, if he/she has any; extract from a real estate register; declaration of honour that he/she does not own any other property which could be used for covering costs for the defence.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Section 33 Para 5 CCP: All the authorities responsible for criminal proceedings are always obliged to advise the charged person of his/her rights and provide him a full opportunity to claim such rights.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

042 *(Check any that apply)*

How should the suspect be informed of this right?

a. Orally -

b. In writing -

c. By a letter of rights - Yes.

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

Section 33 Para 1, 2, 3, 4 CCP and 37 Para 1 CCP: If the claim to free defence or defence for reduced fee has been adjudicated to the accused by the final decision, the accused may choose a defence counsel or may request for the appointment of a defence counsel. In the latter case, the defence counsel shall be appointed without delay.

046 - When a request is denied, is there a legal remedy?

Yes.

Section 33 Para 4 CCP: Against the decision on the free defence or defence for reduced fee pursuant to Section 33 Para 2 CCP a legal remedy which has a form of complaint is admissible. This remedy has a suspending effect.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Section 39 Para 2, 3 CCP: The accused may choose a defence counsel in accordance with Section 33 Para 1 CCP and Section 37 Para 1 CCP. If the accused has not chosen a defence counsel, he/she may ask the judge for the appointment of a defence counsel. In such case, the defence counsel is appointed according to the alphabetically organized waiting list of the counsels pursuant to the Section 39 Para 2 CCP. This list is administered by the court and contains list of defence counsels who agree with the execution of the defence as the appointed counsels at this court and have a seat in the district of this court. In case it is not possible to appoint a counsel from this list, the court shall appoint a counsel from a list of a superior court. Counsels listed in the list pursuant to their surnames are appointed as the appointed counselors successively according to the order of the surnames in the list.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

a. Prosecutor -

b. Judge - Yes.

c. lawyer's professional organisation (bar) -

d. legal aid board -

e. other authority, please specify authority [...] - Yes. See replies to questions 045 and 047. The accused may choose a defence counsel or request the appointment of a defence counsel (for the latter see reply "judge").

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Regulation of the Ministry of Justice No. 177/1996 Sb. of 4th June 1996, as amended, providing for fees and remuneration of lawyers for their provision of legal services (hereinafter called "the lawyer's tariff")

Section 1 Para 1 of the the lawyer's tariff:

If the accused has chosen the defence counsel, a lawyer's fee for his rendering of legal services ("lawyer's fee") shall be regulated by the lawyer's contract between the lawyer and his client ("contractual fee" may be e.g. per hour or other time unit). Where a lawyer's fee is not set by a contract, it shall be governed by provisions of the Regulation herein regarding non-contractual fees.

Section 6 Para 1 of the lawyer's tariff:

The amount of a non-contractual fee shall be determined according to the rate for a non-contractual fee for one legal act of legal services provided and according to the number of legal acts performed by a lawyer in a particular case.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

See Section 7 of the lawyer's tariff:

The rate for a non-contractual fee for one act of the legal service is set from the tariff value of

1. up to CZK 500 CZK 300,

...

7. from more than CZK 10,000,000 48,300 CZK and CZK 40 for every commenced CZK 100,000 exceeding CZK 10,000,000.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

In 2008: 562,093,000 CZK (21,618,962 Euro)

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

In 2008: 4,5% (from the total budget of the Czech Ministry of Justice - we do not know the term "total criminal justice budget").

055 - What is the size of the population of your country?

10,4 million

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence³⁸?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect³⁹ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. Other grounds specified by Section 36 CCP:

The accused is put in an observation ward in hospital; if it is deemed necessary by the court or by the public prosecutor in the pre-trial proceedings; in the trial conducted in simplified proceedings; if he/she shall express whether he/she renounces the right to apply the speciality rule in proceedings after the

³⁸ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

³⁹ Blindness, deafness et cetera.

extradition from a foreign state; in proceedings for extradition to a foreign country, in proceedings on further surrender from the Czech Republic to another Member State; in proceedings on the recognition of the foreign decision; in proceedings in which imposing of a protective medical treatment is determined except for the anti-alcoholic protective medical treatment; in proceedings to deal with a complaint concerning the violation of a law if the convicted died.

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

If the claim to free defence or defence for reduced fee has been adjudicated to the accused.

See Section 33 Para 2 CCP:

If the charged person attests to have not money enough to pay the defence cost, the presiding judge and in pre-trial proceedings the judge shall determine that the charged person is entitled to free defence or defence for reduced fee. In such event the defence cost shall be paid, either fully or in part, by the state.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Section 28 Para 2 CCP: Under the conditions set in Para 1, it is necessary to translate in writing to the accused resolution on the commencement of the criminal prosecution, resolution on the provisional detention, indictment, motion for punishment, judgment, criminal order, decision on appeal, decision on conditional discontinuance of criminal prosecution; this does not apply if the accused after the advice declares that he/she does not request acquisition of the translation of such decision.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

There are standard fees for legal translation pursuant to the Section 29 CCP and pursuant to the Section 17 and 18 of the Regulation No 37/1967 on implementation of the law on experts and interpreters, as amended.

Section 17 of the above-mentioned regulation:

The fee for the act of interpreter makes according to its exigence and the measure of the expert knowledge which was necessary to exert:

Written translation from a foreign language into the Czech language or vice versa
1 page...100 - 350 CZK,

Written translation from a foreign language into a foreign language or vice versa
1 page...100 - 350 CZK.

Section 17 of the above-mentioned regulation:

The fee for the linguistic revision of a translation makes according to the aspects stated in the Section 17
30 - 90 CZK for 1 page.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. Other documents specified in Section 28 Para 2 CCP

than those already referred to in 068: resolution on the commencement of the criminal prosecution, judgment, decision on appeal, conditional discontinuance of criminal prosecution.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

Section 12 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Section 2 Para 14 of CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

There are standard fees for legal translation pursuant to the Section 29 CCP and pursuant to the Section 17 and 18 of the Regulation No 37/1997 on implementation of the law on experts and interpreters, as amended.

Section 17 of the above-mentioned regulation:

The fee for the act of interpreter makes according to its exigence and the measure of the expert knowledge which was necessary to exert:

- 1: Oral interpretation from a foreign language into the Czech language or vice versa
1 hour ...100 - 350 CZK,
- 2: Oral interpretation from a foreign language into a foreign language or vice versa
1hour...150 - 350 CZK.

Section 17 of the above-mentioned regulation:

The fee for the linguistic revision of a translation makes according to the aspects stated in the Section 17 30 - 90 CZK for 1 page.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. The interpreter is brought up for the purpose of any procedural act.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Section 28 Para 1 CCP says that the same general rules which apply for the bringing up of an interpreter apply also for the circumstances when the interpreter is appointed to a person who cannot communicate in other way than by a sign language.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Section 28 Para 1 CCP says that the same general rules which apply for the bringing up of an interpreter apply also for the circumstances when the interpreter is appointed to a person who cannot communicate in other way than by a sign language.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Section 12 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁴⁰

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 160 Para 2 CCP: The copy of resolution on the commencement of the criminal prosecution must be served on the charged person at the beginning of the first examination at the latest.

Section 91 Para 1 CCP: Before the first questioning it is necessary to clarify the accused the substance of the communicated charge and advise him/her of his/her rights.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

⁴⁰ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Section 65 Para 1 CCP: The charged person has the right to inspect the files.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** - Yes.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 2 Para 14 CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

Section 28 Para 2 CCP: Under the conditions set in Para 1, it is necessary to translate in writing to the accused resolution on the commencement of the criminal prosecution, resolution on the provisional detention, indictment, motion for punishment, judgment, criminal order, decision on appeal, decision on

conditional discontinuance of criminal prosecution; this does not apply if the accused after the advice declares that he/she does not request acquisition of the translation of such decision.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

a. the indictment - Yes.

b. the detention order - Yes.

c. the reasons for detention - Yes.

d. the final judgment (sentence) - Yes.

e. parts of the case file -

f. other documents, please specify [...] - Yes. Other documents specified in Section 28 Para 2 CCP than those already referred to in 068: resolution on the commencement of the criminal prosecution, judgment, decision on appeal, conditional discontinuance of criminal prosecution.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Section 33 Para 1 CCP: The charged person has the right to express his/her opinion of all the facts he/she is charged for and of the proofs thereof, but he/she is not obliged to testify.

Section 158 Para 7 CCP: Person giving explanation, with the exception of a suspect, is obliged to testify truth and not remain silent. He/she may deny the explanation if he/she causes by such explanation a danger of criminal prosecution to himself/herself or persons referred to in Section 100 Para 2 CCP.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 33 Para 5 CCP: All the authorities responsible for criminal proceedings are always obliged to advise the charged person of his/her rights and provide him a full opportunity to claim such rights.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 76 Para 5 CCP:

Section 33 Para 1 has to be reasonably taken care of even when the detained person is being questioned also before the charge.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 2 Para 14 of CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Section 33 Para 1 CCP: The charged person may lodge motions and applications.

Section 215 Para 1 CCP: The defendant may request to be enabled to carry out the evidence, in particular the examination of a witness or expert.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 33 Para 5 CCP: All the authorities responsible for criminal proceedings are always obliged to advise the charged person of his/her rights and provide him a full opportunity to claim such rights.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence.

Section 160 Para 2 and 91 Para 1 CCP: The duty to advise the charged person of his/her rights arises with the commencement of the criminal prosecution. At the latest before the first questioning of the charged person it is necessary to clarify the substance of the communicated charge and advise him/her of his/her rights.

Section 76 Para 5 CCP:

Section 33 Para 1 has to be reasonably taken care of even when the detained person is being questioned also before the charge.

Section 179b Para 2 CCP: In the accelerated pre-trial proceedings the suspect has the same rights as the accused.

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Section 2 Para 13 CCP: The one against whom the criminal proceedings are conducted must be informed, at any time of the proceedings, about the rights enabling him/her full application of defence; all the authorities responsible for criminal proceedings are obliged to enable the one against whom the criminal proceedings are conducted to exercise his/her rights.

Section 2 Para 14 of CCP: Anybody having declared that he/she cannot speak Czech is authorised to use the mother tongue or any language he/she declares to speak before the authorities responsible for criminal proceedings.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

DENMARK

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁴¹

yes

According to the Danish Administration of Justice Act (retsplejeloven, hereinafter AJA) a suspect is entitled to request a defence lawyer and that lawyer is permitted to be present when the suspect is questioned by the police.

The lawyer is formally assigned by the court. If the interrogations cannot await such a decision, and the person has requested a specific lawyer, a lawyer can be assigned informally until the court makes a decision.

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

The right to a defence lawyer will in most cases be effected before the questioning of the suspect or at the time of obligatory defence.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

It is stipulated in AJA that when a person is charged with a crime, which can result in a more severe sanction than a fine, the charged person must be informed of the right to request for a lawyer.

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

There is no formal time limit for giving a suspect access to a lawyer, but according to a circular letter of 12 June 2001 information must be given without undue delay.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

If a suspect does not understand Danish a translator shall assist the person during questioning, cf. AJA, Section 149. Moreover, it is a general principle in Danish law that persons not understanding Danish must be assisted to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, Articles 5 (2) and 6 (3) (a) and (e), which has been incorporated in Danish law.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

⁴¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

According to AJA Section 730 (2) the suspect has the right to choose either any entitled lawyer (i.e. entitled to litigate) or a lawyer from a predefined list of lawyers, which are appointed by the Danish Ministry of Justice to appear as counsels for defendants in criminal cases. However, the court can in exceptional cases allow for another person to defend the suspect, if the person in question has an unblemished reputation and is above the age of 18.

The decision of the Ministry of Justice to appoint a lawyer as counsel is based on several considerations. Of decisive importance are the qualifications of the candidate. Preference is given to candidates who have experience in criminal law and criminal proceedings and overall have demonstrated competence and commitment etc.

The court is entitled to dismiss a defence lawyer if the assignment of the lawyer will cause a significant delay of the case or if there is a demonstrable risk that the lawyer hinders or opposes the unravelling of the case.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

It is a fundamental principle in Danish law that the suspect has a right to free communication (in person, by telephone or by use of other electronic measures) with his lawyer. This applies to any stage of a criminal case, e.g. before hearing of third parties or being monitored by any technical means.

012 - Consultation (in person or by telephone) is possible before questioning by the police⁴²?

Yes.

As mentioned it is a fundamental principle in Danish law, that the suspect has the right to free communication (in person, by telephone or by use of other electronic measures) with his lawyer. This applies to any stage of a criminal case, e.g. before questioning by the police.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

⁴² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁴³?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

The defence lawyer has an unconditional right to be present throughout the questioning of a suspect, cf. AJA, Section 745 c, and the defence lawyer must to the extent possible be notified about court meetings

⁴³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

and is entitled to be present at these meetings. If it is not possible to inform the defence lawyer, only urgent court meetings can be held, cf. AJA, Section 745 d.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

As mentioned when a person is charged of a crime, which can result in a more severe sanction than a fine, the charged person must be informed of his right to request for a lawyer.

The suspect can orally be informed about this right, but it should be stated in the police rapport that the suspect is informed.

When a lawyer is appointed it follows from AJA, Section 745 d, that the police/prosecutor in a number of situations must inform the lawyer about a coming questioning, showing of photos or other evidential matters, so that the lawyer is given the possibility to be present.

Furthermore, as mentioned, the defence lawyer is to the extent possible informed about court meetings.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

See above (question 4).

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

See above (question 6).

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

There is no formal evidential rules defining the value of a confession made by a suspect in the absence of a lawyer, but if the mandatory assignment of a lawyer in the mandatory cases set out in AJA, Section 733 is forgotten, an indictment can be rescinded.

The general rule in Danish law is that the court is free to evaluate the evidence presented, taking all relevant circumstances into account. In a case, where a confession is made without the presence of a lawyer, this would most certainly be taken into account.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Questioning of the suspect is generally not tape- or video recorded, but the material content of an interview must be included in the police reports, which the person interviewed, shall have a chance to read afterwards and sign if agreeing upon the content. Copies of all the case material are made for the judge, the defence counsel and the prosecutor.

030 - If so, how many copies of the audio recording are made?

See question 29b.

031 - If so, who is entitled to receive a copy of the audio recording?

See question 29b.

032 - Is the questioning of the suspect video recorded?

Sometimes.

See question 29b.

033 - If so, how many copies of the video recording are made?

See question 29b.

034 - If so, who is entitled to receive a copy of the video recording?

See question 29b.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

When a suspect has been assigned a defence lawyer by the state, the costs will initially be covered by the state, but in case the person is found guilty the state can claim reimbursement of the costs from the convicted person. Costs related to lawyers other than the one assigned by the state are generally the charged person's own liability.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁴⁴?

No.

037 - Is there a means test⁴⁵?

No.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms -
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...]

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

No.

041 - When does the duty to inform the suspect of this right arise?

⁴⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

⁴⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

042 *(Check any that apply)*

How should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

044 *(Check any that apply)*

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

The court's decision concerning reimbursement can be brought before an appeal court (however, only before the Supreme Court if a special permission from the Appeals Permission Board is obtained).

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] - Yes. As mentioned above (see question 10) the suspect has the right to choose a lawyer from a predefined list of lawyers, which are appointed by the Danish Ministry of Justice to appear as counsels for defendants in criminal cases at every Danish court.

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...]-

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

The fee to the defence lawyer is as a general rule provided per hour. However, there are fixed amounts concerning pre-trial procedures, preliminary statutory hearing, visits to the prison etc.

The fees provided concerning trials are depending on the time spend, including the character of the case, e.g. if the suspect has confessed or if the case is involving complicated economic crime.

The defence lawyer provides the court with a specified calculation and on that basis the final fee is decided by the court.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

Unfortunately, it has not so far been possible to collect this information. However, an answer will be provided as soon as possible.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Unfortunately, it has not so far been possible to collect this information. If possible, an answer will be provided as soon as possible.

055 - What is the size of the population of your country?

5.515 287 (March 2009)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board - Yes.

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...]-

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁴⁶?

Yes.

⁴⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect⁴⁷ -
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. According to AJA, Section 731, the grounds

for obligatory defence are:

- (a) when the suspect is brought before the court with the intention of remanding the suspect in custody or to confirm the arrest order,
- (b) when witnesses are questioned, inspections are made, or experts are questioned, before prosecution have taken place,
- (c) when seizure decision has to be taken,
- (d) when a case, after prosecution, is tried before a jury or lay assessors,
- (e) when prosecution concerns a punishment more severe than a fine,
- (f) when a case is appealed or requested reopened and oral proceedings before the court has to take place,
- (g) when witnesses' or experts' explanations are requested, for the use of an already initiated criminal case abroad,
- (h) when the court decides that the suspect is to be questioned behind closed doors,
- (i) when a case, not implying punishment more severe than 3 months of prison or other sanctions than: seizure, the deprivation of the right to drive a motor car or the duty to pay compensation, are proceeded without the defendant present.

If the court, in other than the before mentioned cases, because of the nature of the case, the convicted person or other circumstances, finds it desirable, obligatory defence can also be decided.

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

As mentioned, when a suspect has been assigned a lawyer by the state, the costs will initially be covered by the state, but in case the person is found guilty the state can claim reimbursement of the costs from the convicted person. Costs related to other lawyers than the one assigned by the state are generally the charged person's own liability.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

See above (question 10).

⁴⁷ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

If a suspect does not speak or understand Danish, a translator shall assist the person during questioning, cf. AJA Section 149. Moreover, it is a general principle in Danish law that persons not understanding or speaking Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, Articles 5 (2) and 6 (3) (a) and (e).

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

There is no formal procedure, but it is the prosecutor's and the court's responsibility, to assess whether there is a need for translation of documents in criminal proceedings.

065 - More specifically, who decides whether translation is necessary?

See above (question 64).

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge** -
- b. the indictment** -
- c. the detention order** -
- d. the reasons for detention** -
- e. the final judgment** -
- f. parts of the case file** -
- g. the letter of rights** -
- h. other documents, please specify [...]** -

Yes. There are no formal rules, which specify which specific documents the suspect should receive a written translation of. However, the European Convention on Human Rights is incorporated in Danish law, and Article 6 of the Convention implies that the suspect is entitled to receive a translated version of the documents to the extent it is necessary for the suspect in order to understand what is happening in the criminal proceedings and in court.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

If a suspect does not speak or understand Danish, a translator shall assist the person during questioning, cf. AJA Section 149. Moreover, it is a general principle in Danish law that persons not speaking or understanding Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, Articles 5 (2) and 6 (3) (a) and (e). Therefore, a translator will assist a suspect during the proceedings/in court, if the suspect does not understand Danish.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

There is no formal procedure, but it is the prosecutor's and the court's responsibility to assess whether there is a need for translation of documents in criminal proceedings.

075 - More specifically, who decides whether interpretation is necessary?

See above (question 74).

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

The National Commissioner of Police administers a list of authorised interpreters, who can be contacted at any time of the day, but they have no obligation to assist on a 24-hour basis. The list covers 1850 interpreters representing 140 languages and dialects.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

The courts have also access to the list mentioned in question 78.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer** - Yes.
- b. the questioning of the suspect by the police** - Yes.
- c. the trial** - Yes.
- d. other procedural occasions/activities/hearings, please specify [...]** - Yes. During all parts of a criminal case in which the suspect is involved an interpreter must be present, if the suspect does not understand or speak Danish.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

AJA, Section 149, provides for rules regarding linguistic assistance, including assistance to deaf defendants.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁴⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

It is stipulated in AJA, Section 752, that before the police interrogates an accused, he/she must be explicitly informed of the charge and that the person in question is under no obligation to give a statement. Furthermore, it follows from AJA, Section 758 (2), that when a person is arrested, the police must as soon as possible inform the person in question of the charge and the time of the arrest. It must appear from the police rapport, that these rules have been observed.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

See above (question 87).

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

See above (question 87).

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

As mentioned above it is a general principle in Danish law that persons not understanding or speaking Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, Articles 5 (2) and 6 (3) (a) and (e), which has been incorporated in Danish law.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

If the suspect has a defence lawyer, the lawyer, on behalf of the suspect, exercises his right to have access to the file of the criminal investigation. According to AJA, Section 729 a (2) and (3) the court provides the defence lawyer with a copy of the relevant records. The suspect may become familiar with the copies, unless it is feared that the copies will be used in an unlawful way or the court has imposed for the lawyer not to hand over the copies to the suspect. The defence lawyer also has the right to be familiar with the information procured by the police, and must have a copy provided if no further inconvenience is caused. The defence lawyer can only provide the suspect with the copies if the police allow him so.

⁴⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

A suspect without a lawyer has after request the same right, cf. AJA Section 729 b (1).

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.

f. other documents, please specify [...] - Yes. See above question 92. According to AJA, Sections 729 a and 729 b suspect can be provided with the relevant court records and the information procured by the police.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

It follows from AJA Section 750, that the police cannot order anyone to make a statement and no force may be used to make someone give a statement. However, everyone is upon request, obliged to state name, address, and date of birth to the police.

Furthermore, it is stipulated in AJA, Section 752 (1), that before the police interrogates an accused he shall be explicitly informed of the charge, and that he is under no obligation to give a statement. It must appear from the police report, that the suspect has been informed. The provision similarly applies to questioning in court.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

See above (question 98)

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
The duty arises before a suspect is interrogated.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

As mentioned above it is a general principle in Danish administrative law that persons not understanding or speaking Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, Articles 5 (2) and 6 (3) (a) and (e), which has been incorporated in Danish law.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

It is stipulated in AJA, Sections 839 (1) and 866 (1), that the defence lawyer has the right to call and question witnesses.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

ENGLAND & WALES

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁴⁹

yes

Under The Police and Criminal Evidence Act 1984 section 58 (PACE) and Codes of Practice C, section 6, a person in police custody is entitled, at any time, to consult and communicate privately, whether in person, in writing or by telephone with a solicitor. Independent legal advice is available free of charge from the duty solicitor. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice to the person concerned as soon as practicable.

This right is also part of our common law.

Sections 14, 15 and 17 of the Criminal Procedure (Scotland) Act 1995 make provision in this regard.

Section 14 permits detention and questioning at a police station for up to 6 hours, section 15 provides for the rights of the person arrested and detained, while section 17 is in relation to the rights of an arrested accused to have access to a solicitor.

In summary, the provision in Scotland in this regard is that a person who has been arrested / detained, and who is in custody in a police station or other premises, shall be entitled to have intimation of his custody and of the place where he is being held sent to a solicitor.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Under PACE Code of Practice C, section 6, a person in police custody must be informed that they may at any time consult and communicate privately with a lawyer. This is also part of the information provided in the notice of entitlements (letter of rights).

Both sections 15 and section 17 of the Criminal Procedure (Scotland) Act 1995 make relevant provision.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Under PACE Code of Practice C, section 3.5, the custody officer must ask the detainee whether they would like legal advice and determine whether the detainee requires an interpreter.

⁴⁹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

The notice of entitlements is also translated into 44 languages.

In Scotland, there is no legal obligation. However, Scottish police regard it as a matter of good professional practice to ensure that all communications with the public are carried out in the language most easily understood by the individual concerned, including if necessary arranging for the prompt attendance of an interpreter, consistent with time critical and in the main exceptional situations where vital evidence may be lost e.g. roadside procedures for road traffic offences. Scottish police forces have access to an interpreting service on a 24 hour/365 day basis.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

Yes.

008 - If so, please specify on which grounds:

Under PACE section 58 and Code of Practice C, section 6, access to legal advice may be delayed only if the person is in police detention in connection with an indictable offence for which he has not been charged and an officer of the rank of superintendent or above has reasonable grounds for believing that the exercise of the right:

- (i) will lead to interference with or harm to evidence connected with the indictable offence or interference with or physical injury to other people; or
- (ii) will lead to the alerting of other people suspected of having committed such an offence but not yet arrested for it; or
- (iii) will hinder the recovery of property obtained as a result of such an offence.

Access may also be delayed where the person detained for the indictable offence has benefitted from his criminal conduct and the officer has reasonable grounds for believing that the right to legal advice being exercised will hinder the recovery of the value of the property constituting the benefit.

A person who wants legal advice may not be interviewed or continue to be interviewed until he has received legal advice unless either:

- (a) The circumstances described above apply.
- (b) An officer of the rank of superintendent or above has reasonable grounds for believing that:
 - (i) delay might:
 - lead to interference with, or harm to, evidence connected with an offence; or
 - lead to interference with, or physical harm to, other people; or
 - lead to serious loss of, or damage to, property; or
 - lead to alerting other people suspected of having committed an offence but not yet arrested for it; or
 - hinder the recovery of property obtained in consequence of the commission of an offence.
 - (ii) where a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the process of investigation.
- (c) The solicitor nominated by the person, or selected by him from a list:
 - (i) cannot be contacted; or
 - (ii) has previously indicated that he does not wish to be contacted; or
 - (iii) having been contacted, has declined to attend;and the person has declined to ask for the duty solicitor, or the duty solicitor is unavailable.
- (d) The person who wanted legal advice changes his mind.

009 - If so, please specify for which period of time?

Up to [...] hours after arrest

Under PACE section 58(5) and section 41(2) access to legal advice may be delayed only for as long as the statutory conditions for delay exist and in no case beyond 36 hours of the person arriving at the police station or 24 hours following the person being arrested, whichever is the earlier.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Suspects and defendants may consult a lawyer of their own choosing from among private sector lawyers under contract to the Legal Services Commission (LSC), or from the Public Defender Service which is funded by the LSC. No defendant would be forced to choose a public defender where a private practice lawyer existed as an alternative.

In relation to a small group of specified offences, public funding of advice at the police station is restricted to telephone advice only. These are less serious, non-imprisonable offences such as drink driving. While suspects retain the right to consult a lawyer of their own choosing in such cases, if they wish to receive publicly funded advice, their choice is restricted to advice from the telephone service known as Criminal Defence Service (CDS) Direct which operates under contract to the LSC.

In Scotland, the general legal basis is the Legal Aid (Scotland) Act 1986. However, the right to legal assistance of one's own choosing is not an absolute one where the assistance is provided by the State. The right is limited to the selection of counsel and solicitors from those who are available, qualified and willing to act.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Under PACE section 58 and PACE Code C, section 6, all detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty solicitor.

Section 17 of the Criminal Procedure (Scotland) Act 1995 in particular makes provision for a private interview with a lawyer before the first court hearing.

012 - Consultation (in person or by telephone) is possible before questioning by the police⁵⁰?

Yes.

See above (011a).

In Scotland, there is no statutory legal guarantee under the relevant legislation, but if either a lawyer or detainee request access to each other following intimation of rights under the provisions of both sections 15/17 of the Criminal Procedure (Scotland) Act 1995, this can be allowed. In both cases of a detainee or an arrested person this would be at the discretion of the Senior Investigating Officer and will be dependent on the circumstances of the crime under investigation e.g. the prevention of crime or the apprehension of other suspects. A denial of access is normally recorded in police investigation files giving a full explanation of the reasoning behind such a decision. Full details are also normally required to be

⁵⁰ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

included in the police report to the procurator fiscal (prosecutor). As previously stated S17 Criminal Procedure (Scotland) Act 1995 only requires to provide a person with access to a solicitor prior to their appearance at court.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

Yes.

Not in principle and not specified in law but visits should only be granted at a time that is convenient to the overall investigation and also at a time practicable to the Duty Officer who has custody, charge and care of all detainees.

016 - Can the lawyer visit his client detained in prison⁵¹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

Only insofar as a "legal visit" needs to be arranged. Prison authorities cannot refuse a lawyer access to his client.

Rule 66(1) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006 specifically provides for this: — (1) A prisoner shall be entitled to receive a visit from his or her legal adviser at any reasonable time for the purposes of consulting about any legal matter in which the prisoner is or may be directly interested (2) Where a prisoner receives a visit by a legal adviser in terms of this rule the visit (a) may take place within the sight of an officer; but (b) shall take place outwith the hearing of any officer.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

Yes.

Only by the practical constraints of running a prison. This allows consideration for example if such a visit was proposed outside normal visiting times, late at night etc.

Nonetheless, the prisoner must have opportunities for adequate access to legal advice.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

In England and Wales, the suspect can give informed consent to the supervision of oral and written communications between him or herself and his or her lawyer. Under PACE, section 58 and Code of Practice C, section 6.1 all suspects have a right to communicate both in writing and orally (including over the telephone) with a solicitor in private. This is a fundamental right. The guidance to PACE Code of

⁵¹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

Practice C states "if the requirement for privacy is compromised because what is said or written by the detainee or solicitor is overheard, listened to, or read by others without the informed consent of the detainee, the right will have effectively been denied." Any written or oral communications between a suspect and his or her lawyer are also protected by legal professional privilege (LPP).

In Scotland it is the common law of LPP that gives equivalent protection to this aspect of PACE. This privilege can of course be waived by the client.

If your question is dealing also with suspects after charge, there are prison rules enabling supervision. In England & Wales for example the legal adviser of a prisoner shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer: see rule 38(1) Prison Rules 1999, as amended.

For completeness there are legislative regimes for the interception of postal and telephone communications. These are general regimes. Part I of the Regulation of Investigatory Powers Act 2000 for example enables a Minister to authorise by warrant the interception of communication on particular grounds (national security, prevention or detection of serious crime, safeguarding the economic well-being of the UK). Part II of that Act and the Regulation of Investigatory Powers (Scotland) Act 2000 sets up a framework for lawful surveillance, with safeguards. If carried out in accordance with the legislation and Codes of Practice and provided the surveillance does not violate ECHR rights surveillance would be permissible: see *McE v Prison Service of Northern Ireland (HL)* [2009] 2 WLR 782. We are not interpreting your question about possibilities to supervise the oral communication however as referring to intercept regimes.

019b - Please specify, on which grounds surveillance can be ordered:

See above.

019c - Please specify, for which period of time surveillance can be ordered:

See above.

019d - Please specify, the kind of surveillance that can be ordered:

See above. If, exceptionally, a suspect gave informed consent the kind of surveillance would be dependant on his or her wishes.

019e - Please specify, any legal remedies provided to the defence in this respect:

As above the right (whether based on PACE or LPP) is an important one. If a suspect waived his right the question of legal remedies does not arise. If there were unlawful interference with the right, potential legal remedy might include a request to the court that any proceedings be stayed as an abuse of the process of the court: for example see *R v Grant* [2006] QB 60.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

See again the answers as provided at 19. In addition prison Governors have limited powers to open correspondence under prisons legislation.

020b - Please specify, on which grounds surveillance can be ordered:

In Scotland for example under the Prisons and Young Offenders Institutions (Scotland) Rules 2006, rule 58, written correspondence can only be opened in the presence of the prisoner where there is reason to believe it contains a prohibited article. The contents can only be read specifically under the Governor's authority where there is reasonable cause to believe that the content may endanger the security or safety of the prison. The prisoner must be informed about this.

See also for England and Wales rule 39 of the Prison Rules 1999: correspondence may be opened if the governor has reasonable cause to believe that it contains an illicit enclosure; correspondence (with legal advisers or the courts) may be opened, read and stopped if the governor has reasonable cause to believe its contents endanger prison security or the safety of others or are otherwise of a criminal nature. A prisoner shall be given the opportunity to be present when any correspondence to which this rule applies is opened and shall be informed if it or any enclosure is to be read or stopped.

020c - Please specify, for which period of time surveillance can be ordered:

There are no specified time periods under the prisons legislation.

020d - Please specify, the kind of surveillance that can be ordered:

See the answer to 20b, opening and reading correspondence.

020e - Please specify, any legal remedies provided to the defence in this respect:

If prisoners felt action taken was not in compliance with the rules, they could instigate a formal complaint or seek a judicial review, for example for breach of ECHR rights.

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Under PACE Code of Practice C, section 6, where a suspect has been permitted to consult a solicitor and the solicitor is available (i.e. present at the police station or on his way to the police station or easily contactable by telephone) at the time the interview begins or is in progress, the solicitor must be present while the suspect is interviewed.

A person who wants legal advice may not be interviewed or continue to be interviewed until he has received legal advice unless either:

(a) The circumstances described above at 008 apply.

(b) An officer of the rank of superintendent or above has reasonable grounds for believing that:

(i) delay might:

- lead to interference with, or harm to, evidence connected with an offence; or

- lead to interference with, or physical harm to, other people; or

- lead to serious loss of, or damage to, property; or

- lead to alerting other people suspected of having committed an offence but not yet arrested for it; or

- hinder the recovery of property obtained in consequence of the commission of an offence.

(ii) where a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the process of investigation.

(c) The solicitor nominated by the person, or selected by him from a list:

(i) cannot be contacted; or

(ii) has previously indicated that he does not wish to be contacted; or

(iii) having been contacted, has declined to attend;

and the person has declined to ask for the duty solicitor, or the duty

solicitor is unavailable.

(d) The person who wanted legal advice changes his mind.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor -
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

PACE Code C sections 3, 6 and 11 for England and Wales provide all detainees must be informed of that they may at any time consult and communicate privately with a solicitor.

In the case of police questioning in Scotland, there is no legal guarantee to have a lawyer present during questioning. However, see the answer to question 012 above. Sections 15 and 17 of the Criminal Procedure (Scotland) Act 1995 make provision to have a lawyer contacted, which may in normal circumstances lead to a lawyer attending the interview.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Under PACE Code of Practice C, section 3.5, the custody officer shall ask the detainee if they would like legal advice and determine whether the detainee requires an interpreter.

There is no such legal obligation in Scotland, but see the answers to question 006, 012 and 024 above.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Under section 76(1) of PACE a confession made by the accused person may be given in evidence against him insofar as the confession is relevant to a matter in issue in the proceedings. However, a court may

exclude a confession if it was obtained by oppression or is likely to be rendered unreliable in consequence of something said or done (section 76(2) of PACE) or if admitting it would have an adverse effect on the fairness of the proceedings (section 78 of PACE). Confessions made in absence of a lawyer could fall into the categories of unreliability or unfairness and whether they will or not will depend on the circumstances of the proceedings.

In Scots law, presence/ absence of a lawyer is not the central criteria for admissibility in evidence of a confession. The key aspect which the court will test is whether the confession was voluntarily made and fairly obtained in all circumstances. This covers both procedural aspects and any inherent vulnerability of the suspect. It is open to the accused and his /her defence in the Scottish adversarial system to challenge the admissibility of the confession on the basis it was unfairly obtained in the absence of a solicitor whose presence had been requested. Unduly aggressive or repeat questioning designed to bully/trick/induce a suspect are all liable to render a confession inadmissible in the eyes of a Scottish court.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Interviews with suspects at police stations in England and Wales are always tape-recorded in accordance with PACE section 60 and Code of Practice E. The custody officer may authorise the interviewing officer not to tape record the interview:

- (i) where it is not reasonably practicable to do so because of failure of the equipment or the non-availability of a suitable interview room or recorder and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or
- (ii) where it is clear from the outset that no prosecution will ensue.

In Scotland, the Lord Advocate, who has overall responsibility for Scottish investigations/prosecutions, has provided guidelines on the circumstances when persons should be interviewed under tape recorded conditions. In the case of adults it should be when the suspected crime is potentially prosecutable in the Sheriff Court (middle level of court in Scotland) or above and would generally include the following:-

- Suspect detained in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995.
- Arrested person suspected of other crimes.
- Person in voluntary attendance.
- Arrested person awaiting charge.
- Reluctant witness.
- Person arrested on a petition warrant who requires to be charged.

The Lord Advocate has indicated that children should be interviewed under tape recorded conditions in circumstances when the crime they are suspected of committing could be prosecuted on indictment or if the crime is so serious as to normally give rise to solemn (highest level of court case) proceedings.

The Guidelines are to offer assistance in identifying appropriate cases for such interviews and have no legal status. Much depends upon the availability of such facilities at individual police stations.

030 - If so, how many copies of the audio recording are made?

In England and Wales, in accordance with PACE Code of Practice E, two copies are made, a master tape and a working copy. A copy of the tape is supplied to the suspect as soon as practicable if the person is charged or informed that he will be prosecuted.

031 - If so, who is entitled to receive a copy of the audio recording?

The person charged.

In Scotland, one copy is kept by the police in case it is required for further analysis in relation to the case. The other is the so called “evidential copy”, which is submitted to the prosecutor, and which may then be used in subsequent judicial proceedings. The suspect will be asked to pick the one he/she wants to be sealed in a tamperproof manner as the evidential copy. In terms of Crown (prosecution) disclosure obligations, the defence is also entitled to a copy.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Under PACE Code of Practice F it might be appropriate to video record interviews:

- (a) with suspects in respect of indictable offences;
- (b) which take place as a result of the interviewer exceptionally putting further questions to a suspect about an indictable offence after that suspect has been charged with, or informed he might be prosecuted for, that offence;
- (c) in which the interviewer wishes to bring to the notice of a person, after that person been charged with, or informed he might be prosecuted for, an indictable offence any written statement made by another person or the content of an interview with another person;
- (d) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
- (e) with, or in the presence of anyone who requires an appropriate adult; or
- (f) in any case where the suspect or his representative requests the interview be recorded visually.

A limited number of police forces make videotape recordings of interviews in serious and complex cases. A smaller number of police forces also make use of video-recording of interviews on a wider range of offences, although this is not currently widespread practice. There are no immediate plans to make videotaping of interviews with suspects mandatory. The Government is undertaking a pilot scheme to assess the benefits of videotaping interviews.

In Scotland, this matter is left to the discretion of individual police forces.

033 - If so, how many copies of the video recording are made?

Similar arrangements apply as with audio recording.

034 - If so, who is entitled to receive a copy of the video recording?

Similar arrangements apply as with audio recording.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

In England and Wales, legal advice and assistance is available without reference to their financial resources to anyone who is arrested and held in custody at a police station or other premises. Initial advice may be given by telephone followed by attendance in person.

A detained person is entitled to free legal advice and when taken to court can have free legal assistance from the duty solicitor, or a solicitor of his or her own choice. The duty solicitor can help the defendant apply for a representation order where the defendant has not already applied for one. Legal representation in criminal proceedings is provided by private sector lawyers under contract to the Legal Services Commission (LSC), and by the Public Defender Service which is funded by the LSC. Advice centre staff cannot represent individuals in criminal proceedings.

Where a defendant appears before any criminal court, he may apply for a representation order which will entitle him free of charge to the services of a solicitor and/or barrister depending on the type of case. A representation order covers all criminal proceedings including everything preliminary or incidental to the main trial or bail proceedings.

For Scotland, the relevant legislation is the Legal Aid (Scotland) Act 1986 as supplemented by a number of regulations made under that Act.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁵²?

Yes.

In England and Wales, there is no merits test in police custody.

However, following the introduction of the Criminal Defence Service (CDS) Act 2006, representation in the magistrates' courts has been subject to a means test. In order to qualify for criminal legal aid in the magistrates' court, the applicant must pass the 'Interests of Justice' (merits) and financial eligibility (means) tests. The relevant provisions are sections 12, 13, 15 and 20 of, and Schedule 3 to, the Access to Justice Act 1999, and regulations made under that Act.

In assessing the 'Interests of Justice' in relation to any one individual, the court will consider a number of factors to see whether they are relevant to the case in question. This includes whether the applicant, if convicted, is likely to suffer a loss of liberty, livelihood or reputation. It may also take account of the defendant's inability to follow court proceedings if that person has an inadequate knowledge of English. Provided one or a combination of these factors is relevant to the applicant they will generally be deemed by the court to have satisfied the 'Interests of Justice' test. Where the defendant is not represented, the

⁵² A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

court may decide that it is nonetheless in someone else's interest that the applicant be represented. Sections 34 – 40 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) provide protection for victims and witnesses against cross-examination by a defendant in person.

Representation for Crown Court cases, is currently subject to the "Interests of Justice" test only. The representation order covers obtaining advice on appeal and an application for a further representation order can be made directly to the Court of Appeal to cover those proceedings.

In Scotland, suspects who are kept in custody will appear in court the next working day after arrest and can ask the duty solicitor to represent them at first appearance, or another solicitor of choice. Depending on the seriousness of the alleged offence, and whether a guilty or not guilty plea is entered, individuals may have to pay for a solicitor other than the duty one. If an accused person decides to plead guilty, then a duty solicitor can act on their behalf in tendering the plea and can continue to act until the case is finished. In these circumstances the accused person is not required to claim legal aid or pay for this service. In general, if the accused person asks to speak to another solicitor they may be required to contribute towards the costs of this, depending on the precise circumstances of the case.

Decisions to grant applications for criminal legal aid in summary proceedings (i.e. cases which normally result in a fine or up to 6 months imprisonment e.g. road traffic offence, breach of the peace) are based on the following: whether an accused could pay for representation without undue hardship to him or his dependants; whether an alternative source of funding exists; and, whether it is in the interests of justice for summary legal aid to be granted.

The interests of justice test takes into account factors such as:

- The likelihood of a prison sentence if found guilty
- The level of complexity of the case would make it difficult to argue in court
- Ability of the accused to understand proceedings
- Whether it is in someone else's interests for the accused to be represented in court
- Whether the accused has a non-frivolous defence. This is in relation to the merits of any proposed defence to the case an accused intends to lead i.e. the strength of the case on the merits.

An accused person who pleads not guilty under solemn procedure (cases which normally result in imprisonment of more than 6 months e.g. murder, rape, robbery) is initially entitled to automatic legal aid for representation at their first appearance in court in the case. There is no separate "interests of justice" test applied, under solemn proceedings, as the seriousness of the charge and the impact of the possible conviction are assumed.

037 - Is there a means test⁵³?

Yes.

The Magistrates' Court means test is designed to identify whether the defendant can genuinely afford to pay his defence costs. This is achieved by weighting an applicant's gross annual income to reflect his family and household circumstances. Where an applicant's weighted gross annual income exceeds £22,235, he is financially ineligible for a grant of representation. Where an applicant's weighted gross annual income is £12,475 or less, he is financially eligible for a grant of representation. For those applicants whose adjusted gross annual incomes fall between the two thresholds, a more detailed assessment of their income is carried out. This provides for deductions in respect of income tax, national insurance, council tax, as well as actual housing, childcare and maintenance costs, and an allowance for

⁵³ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

living expenses. If as a result of these calculations, the applicant's disposable income does not exceed £3,398, he will be financially eligible under the new scheme.

Applicants in receipt of income support, income-based jobseeker's allowance, income-related employment and support allowance or the guaranteed state pension credit are automatically deemed financially eligible (passported) under the new scheme, as are applicants under the age of 18. A hardship review provides a safety net for those applicants who have not passed the financial eligibility test, but are genuinely unable to pay for their defence costs. This may be because the costs of the case are particularly high, or because they have excessively high outgoings; eg care costs for a disabled relative.

Applicants are required to submit evidence in support of their application although these requirements have been kept to a minimum. For example, an applicant claiming receipt of a passporting benefit will only need to provide details of their national insurance number or a letter from the relevant benefits agency, whilst applicants who are employed need only to furnish their most recent wage slip.

The Government is looking to extend the means testing process to the Crown Court, which at present relies solely on a system of Recovery of Defence Costs Orders which can be granted at the end of the court process. A consultation exercise recently took place on proposals for a new Crown Court means testing scheme.

In Scotland, where an accused person has pled guilty to a criminal charge, is being prosecuted under summary procedure and is not in custody, then legal representation to assist the accused with that plea may be available in the form of Advice By Way of Representation (ABWOR). Alternatively, Advice and Assistance (A & A) may be available to enable their solicitor to write to the court to enter a guilty plea on the accused person's behalf. Both A & A and ABWOR are subject to a test of financial eligibility which is carried out by a solicitor. However, in some instances prior authorisation may be required by the Legal Aid Board.

Applications of solemn criminal legal aid for subsequent stages of the case are currently made to the court, which considers whether the accused could pay for their own representation without undue hardship.

A number of factors are considered in the test of undue hardship. These include: the number of witnesses involved; the likelihood that expert evidence would be required; legal complexities involved and; any aspects of the case likely to lead to the requirement for significant time and labour expenditure.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms** -
- b. any rules on what documentation should be provided, please specify rules [...]**
- c. other rules, please specify [...]** - Yes. See above.

- g. The Scottish Legal Aid Board provide detailed advice to people who think that they may need to apply for legal aid. <http://www.slab.org.uk/>

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Under Article 6(3) of the European Convention of Human Rights, which has full application to the law of England and Wales through the Human Rights Act 1998, anyone charged with a criminal offence should be provided with a number of minimum rights which include: adequate time and facilities to prepare their defence, access to legal representation and where a suspect does not have sufficient means, access to free legal assistance when the interests of justice so require.

Under PACE Code of Practice C, section 6, all detainees must be informed that they may at any time consult and communicate privately with a solicitor and that free independent advice is available from the duty solicitor.

In Scotland, there is no statutory duty as such but it would be part of the solicitors' professional duty to inform the person of his entitlement to legal aid as soon as possible. If the duty solicitor is used then that in effect is part of the criminal legal aid offered.

ECHR has full application in Scotland through the Human Rights Act 1998 and the Scotland Act 1998, and Scottish Ministers can be challenged in the courts if they fail to comply.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

There is no statutory requirement, however the notice of entitlements is translated in 44 languages. In addition, according to PACE Code of Practice C, section 13, a chief officer should make sure appropriate arrangements are in place for the provision of qualified interpreters for people who: are deaf; do not understand English.

Similarly in Scotland, under the existing codes, police and the Scottish Court Service have responsibility for supplying interpreters for the accused.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...] Yes. The Legal Services Commission (delegated to the court).

In Scotland, the judge can also decide on the request for legal assistance.

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

The target of reaching a decision on grant of representation order is within 48 hours of receipt of completed application.

In Scotland, targets are agreed by Ministers and published in the corporate plan. Initial applications in summary cases should be actioned within 10 days.

046 - When a request is denied, is there a legal remedy?

No.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

a. preference of the suspect - Yes.

b. specialisation of the lawyer -

c. availability of the lawyer -

d. other factors, please specify [...] - Yes. And whether the lawyer has a contract with the LSC.

Solicitors only appear in the magistrates' courts except in exceptional circumstances. Only the litigator is named.

- g. Similarly in Scotland, it will usually be the lawyer of choice provided he/she is registered with the SLAB (Scottish Legal Aid Board) to provide services under the legal aid scheme.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

a. Prosecutor -

b. Judge -

c. lawyer's professional organisation (bar) -

d. legal aid board -

e. other authority, please specify authority [...] - Yes. The defendant decides on the lawyer providing the solicitor has a General Criminal Contract. (See answer to question 047 above).

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

In England and Wales, advice and assistance is available free of charge to all suspects detained at the police station.

The fees paid to solicitors and counsel acting for the accused in criminal proceedings are governed by the Access to Justice Act 1999 and the Criminal Defence Service (Funding) Order 2001. The majority of payments made in magistrates' court proceedings are standard fees. These cover all aspects of the case, including advocacy.

In the Crown Court there is a system of standard or graduated fees. In non standard/graduated fee cases (the longer cases) the remuneration of legal representatives is determined on the basis of fees considered to be reasonable for work actually and reasonably done. In some of the extremely long and complex cases with large numbers of witnesses and large amounts of evidence (e.g. complex commercial fraud or drugs

trials), the Legal Services Commission introduced individual contracts for these cases, in order to control the costs and quality of the work. The contracts are staged and fees agreed by the Commission with solicitors and barristers at the beginning of each stage. These cases are known as Very High Cost Criminal Cases (VHCCCs).

In relation to Scotland, further details on fees/structures are available from the Scottish Legal Aid Board (SLAB). Much depends on the specific circumstances applicable in each case. See also the answers to questions 51 and 53 below.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Not in England and Wales.

In Scotland however, fixed payments apply to certain aspects of summary criminal legal aid under ss24 of the 1986 Act granted by the SLAB; under ss23(1)(b) granted by the Court; and to automatic criminal legal aid where a legal aid certificate is granted with regard to proceedings. However, there is no upper ceiling. The final amount granted in the specific case depends on the precise circumstances.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

Not in England and Wales.

In Scotland however, the accused may need to make a contribution depending on personal circumstances and the precise nature of the individual case. See answers to questions 036 and 037. For initial advice and assistance, a person will qualify for this provided his disposable income is less than £234 per week. However, this will be subject to a sliding scale of contributions (though no contribution is due if disposable income is less than £100 per week). For full criminal legal aid, the initial eligibility threshold is £211 for disposable weekly income and £1,639 for disposable capital. However, even if income or capital exceeds these limits, a person may still qualify for legal aid if it can be shown that it would cause undue hardship to expect the applicant to pay for their own legal costs.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

In 2007/08 the cost of legal aid representation in magistrates' courts in England and Wales in cash terms was £295 million, this currently being the only category of legal aid subject to means testing.

The annual budget for Scotland is £150 millions. It is demand-led and in theory there is no ceiling to the amount to be paid.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

The total cost of criminal legal aid in cash terms in 2007/08 was £1,179 million. The proportion of the criminal legal aid budget subject to means testing was 25%.

055 - What is the size of the population of your country?

The resident population of the UK was 60,975,000 in mid-2007 (source: National Statistics)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

All solicitors and advocates are required to meet the professional standards set by the relevant professional body. In respect of solicitors, the Solicitors Regulation Authority (SRA) sets qualification standards (including those required for the exercise of higher court rights of audience), monitors training organisations' performance, drafts the rules of professional conduct and administers the roll of practising solicitors in England and Wales. It also operates a number of accreditation schemes which recognise expertise in a particular area of law. The Bar Standards Board regulates barristers called to the bar in England and Wales. It sets the education and training requirements for becoming a barrister and continuing to practice as a barrister, sets standards of conduct, monitors the service provided by barristers and handles complaints against barristers including taking disciplinary or other action where appropriate.

In Scotland, lawyers providing legal assistance in such circumstances need to be registered with the Scottish Legal Aid Board. (SLAB)

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board - Yes.

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...] - Yes. In addition, the LSC sets a number of requirements for solicitors' firms wishing to undertake criminal legal aid work under contract to the Legal Services Commission. Firms must hold the LSC's Specialist Quality Mark which focuses on the firm's management processes including file management, supervisory arrangements and training. All firms must have at least one supervisor who holds a specified minimum level of legal and managerial competence to supervise other caseworkers. Duty Solicitors wishing to undertake duty solicitor work at the police station and magistrates' court must hold a Duty Solicitor Qualification awarded by the SRA. The LSC has also developed an independent peer review process involving a review of a random sample of files and which focuses on the quality of advice. This is gradually being rolled out across England and Wales. LSC contracts also specify certain performance standards which firms are required to meet and which are monitored by the LSC on an ongoing basis throughout the life of the contract.

In Scotland, SLAB can monitor whether the solicitor has correctly applied the eligibility rules etc. Of course, in terms of quality of legal services, the solicitor may be called to account through the Law Society and the Scottish Legal Complaints Commission.

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁵⁴?

Yes.

⁵⁴ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect** - Yes.
- b. mental capacity of the suspect** - Yes.
- c. physical handicaps of the suspect⁵⁵** - Yes.
- d. deprivation of liberty of the suspect** - Yes.
- e. factual complexity of the case** -
- f. legal complexity of the case** -
- g. severity of the sanction that can be imposed** -
- h. other circumstances, please specify [...]** - Yes. Sections 34 to 40 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) provide protection for victims and witnesses against cross-examination by a defendant in person.

In circumstances where the defendant in person is not allowed to cross-examine a witness, as provided for under sections 34 to 36 of YJCEA, section 38 provides that the court must allow the defendant sufficient time to appoint a representative for the purpose of cross-examining the witness. If at the end of this period no appointment has been made, the court must consider whether it should appoint a representative to cross-examine the witness on behalf of the accused.

Vulnerable persons are identified in PACE and PACE Code of Practice C issued under the Act (or in Northern Ireland the Police and Criminal Evidence Order 1989 (PACE)) for the treatment and detention of suspects in police custody.

Responsibility lies with the police custody officer to identify vulnerable persons when processing people into custody. Custody Officers are specially designated police officers responsible for ensuring that all persons in detention at the police station are treated in accordance with PACE and the PACE Codes of Practice and that proper custody records are maintained.

Vulnerable suspects are identified as: juveniles, i.e. persons under the age of 17; those who are who appear to be suffering from a mental disorder or who are otherwise mentally vulnerable; persons who are deaf or there is a doubt about their hearing, speaking ability or ability to understand English; persons who are blind, seriously visually handicapped or unable to read; and foreign nationals.

Vulnerable persons are afforded special protections by the Code of Practice C issued under PACE. If a person is a juvenile, appears to be suffering from a mental disorder or is otherwise mentally vulnerable, the custody officer must, as soon as practicable, inform the 'appropriate adult' of the grounds for the individual's detention and their whereabouts and ask the adult to come to the police station to see the person. In the case of a juvenile, an appropriate adult means:

- (i) his parent or guardian (or, if he is in care, the care authority or voluntary organisation. The term 'in care' covers all cases in which a juvenile is 'looked after' by a local authority under the terms of the Children Act 1989);
- (ii) a social worker; or
- (iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

In the case of a person who is mentally disordered or mentally vulnerable, an appropriate adult means:

- (i) a relative, guardian or other person responsible for his care or custody;

⁵⁵ Blindness, deafness et cetera.

- (ii) someone who has experience of dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police (such as an approved social worker); or
- (iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

The 'appropriate adult's' role is not defined in law but Guidance provides the role is to assist and advise the arrested person and the arrested person can consult privately with the appropriate adult at any time. Apart from exceptional circumstances, a juvenile or a person who is mentally disordered or mentally vulnerable must not be interviewed or asked to provide, or sign, a written statement in the absence of an appropriate adult. Where an appropriate adult is present at an interview the purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and second, to facilitate communication with the person being interviewed.

The custody officer must immediately call the police surgeon if a person brought to a police station or already detained there appears to be suffering from a mental disorder.

For suspects who are deaf or for whom there is doubt about their hearing or speaking ability or the ability to understand English and the custody officer cannot establish effective communication, the custody officer must call an interpreter. Such persons must not be interviewed in the absence of the interpreter unless they agree in writing to be interviewed without one. The police officer shall take a contemporaneous note of the interview in accordance with the requirements of PACE Code C, as well as tape record it in accordance with the provisions of PACE Code E.

Suspects must not be interviewed in the absence of a person capable of acting as an interpreter if:

- (a) they have difficulty in speaking English;
- (b) the interviewing officer cannot speak the suspect's own language; and
- (c) they wish an interpreter to be present.

If the suspect is blind, seriously visually handicapped or unable to read, the custody officer shall ensure that his solicitor, relative, the appropriate adult or some other person likely to take an interest in him is available to help in checking any documentation. Where Code C requires written consent or signification then the person who is assisting may be asked to sign if the detained person so wishes.

A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) may communicate at any time with his High Commission, Embassy or Consulate, and have them informed of his whereabouts and grounds for detention. Consular officers may visit one of their nationals who is in police detention to talk to him and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.

In Scotland, criminal legal aid is automatically available for: -

- representation at an identification parade;
- certain proceedings where the accused has been taken into custody;
- cases involving insanity, including an examination of facts;
- sexual offences – see below for further details.
- trials in absence (in solemn and summary cases) and
- cases where on appeal the High Court has granted authority for a new prosecution for the same or a similar offence.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

See answers to questions above.

In Scotland, under s22 of the 1986 Act automatic criminal legal aid is available without enquiry as to the accused's resources and is subject to the same conditions as criminal legal aid made available by the court or the Board.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

In England and Wales the ability to appoint special counsel is at common law and covers such areas as public interest immunity hearings.

There is a possibility to appoint "amicus curiae" in litigation before the Scottish courts, who do not appear as a party to a case/on direct instructions from a party, but who can e.g. offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it. However, in practice, it is not thought that much, if any, use is made of this possibility in criminal proceedings in Scotland.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Human Rights Act 1998 and Article (6)(3)(e) and ECHR case-law, as well as PACE Code C, section 13, provide the law on translations. As a matter of ordinary practice, key documents will be translated but there is no statutory basis dictating which documents ought to be translated.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

There is no established procedure in England and Wales. If it is known that a suspect's first language is not English and that he/she requires documents to be translated then all the routine and case progress information which is normally issued in the course of an investigation and prosecution will be translated.

In practice, translation of documents are not often required during the actual course of court proceedings. However, police interview transcripts will usually be translated, especially where there have been admissions made by the accused. In most instances, where translation of a document is required, this will be done during the hearing or trial by the interpreter who is attending for the proceedings.

Good practice recommendations provide that key procedural and other documents ought to be sent to the attending interpreter in advance of the hearing/trial. The defence team can of course decide whether they wish to arrange for translation of any documents which they feel may be of assistance in the case.

065 - More specifically, who decides whether translation is necessary?

At the early stages in proceedings the police/prosecution service will decide. During court proceedings the court itself may also request translations. And of course the defence may decide of their own volition.

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

Not in England and Wales but in Scotland, depending on the requested format or language, translation costs range from £110 to £130 per 1,000 words translated.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. The interview statement in England and Wales.

The charge, indictment and other relevant documents (as per 64 above) in Scotland.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 6(3)(e) adopted into the law of England and Wales by the Human Rights Act 1998 provides a suspect with a right to the free assistance of an interpreter if he cannot understand or speak the language used in court.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

PACE Code of Practice C, section 13 provides chief officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who: are deaf; do not understand English.

075 - More specifically, who decides whether interpretation is necessary?

The Police, or other appropriate investigating agency, will arrange at public expense for an interpreter for any part of the investigation whilst the defendant is in custody in accordance with PACE. A solicitor who is acting for an accused in receipt of publicly funded legal assistance, and who requires an interpreter to take instructions can claim the expenses of the interpreter in their claim for costs from public funds.

The Court appoints (at public expense) the appropriate language interpreter or lip speaker to assist at trial. In all cases, an interpreter will be appointed at the request of the defendant.

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Not for the police but there are some standardised terms and conditions for the courts and prosecution service in England and Wales.

the Scottish Government is looking into this issue.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Telephone interpretation is available for instant assistance at the police station, while waiting for a suitable face-to-face interpreter to arrive. All police forces have access to an interpretation register or service provider on a 24hour/365 day basis.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

At court, if an interpreter is required but was not booked in advance, the hearing will be put back on the listing of the day, while waiting for an interpreter to arrive.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. At any time an interpreter is required, in accordance with legislation and guidance.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Audio versions of the notice of rights should be made available (PACE Code C, notes for guidance 3A).

Courts would make provisions as necessary to accommodate the needs of the defendant.

Similar arrangements are in place in Scotland to ensure that the defendant understands the proceedings.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

PACE Code C, as mentioned above at 74a and section 13(c) if a person appears to be deaf or there is a doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to be interviewed without one.

PACE Code C Section 13 also states that it is the responsibility of a chief officer to make appropriate arrangements if the person is deaf. Similar rules apply in courts; loop equipment is available for people with a hearing impairment, while deaf people are entitled to the assistance of an interpreter or a "language service professional" (e.g. lipspeaker, deafblind interpreter, electronic notetaker etc).

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

This is one of the rights listed in the notice of entitlement and is also considered good practice.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

The notice of entitlement is translated in 44 languages.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁵⁶

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Human Rights Act 1998 Schedule 1 incorporates article 6(3) which provides: Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.

PACE sections 38(3) to (5) provide:

(3) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(4) Subject to subsection (5) below, the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(5) Subsection (4) above shall not apply where the person charged is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

There is also provision in PACE Code of Practice C, section 16.

In Scots law it is taken that the most important right of a person in custody, whether arrested or detained, must be told as soon as he is detained that he is suspected of having committed a crime, the general nature of the crime and the reason for the detention. A suspect who is arrested will be cautioned prior to arrest and may be formally cautioned and charged as soon as is practicable. The legal basis is a combination of statute, principally the Criminal Procedure (Scotland) Act 1995, and common law. The service of “complaint”, “petition” or “indictment” as the case may be (depending on the nature/stage of proceedings) provides notice of the charges.

The prosecutor has the final decision in relation to the charge(s) upon which an accused person will appear in court whether or not these accord with the charges put to an accused by police officers. The service of a complaint or petition provides notice of the charges and an accused person is entitled to access to a solicitor in order to discuss these charges even if he has already had access to a solicitor at an earlier stage i.e. post arrest but prior to appearing in court.

In some cases where an accused appears in court on petition, the prosecutor may ask questions of an accused (section 36 Criminal Procedure (Scotland) Act 1995) pertinent to the matters averred in the charge and specifically to determine: any defence which an accused may have to the charge; any declaration he may wish to make or to put the content of any previously made admission to him (which must be presented to an accused in writing if the prosecutor is to be allowed to ask questions surrounding the alleged admission). This is tape recorded and may be used later in proceedings. It is

⁵⁶ The term ‘charge’ in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

presided over by a Sheriff and the accused is entitled to the presence of a solicitor throughout. He is not obliged to answer any questions put to him by the prosecutor.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

As per the caution, as described above.

PACE Code G (statutory power of arrest by police officers) provides at paragraph 3.3 that “a person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest”.

This is emphasised in note 3 which says: “An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence’s nature, when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.”

Although this is not exactly the same as informing someone of their right to be informed, it does have the same practical effect.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings
See answer to question 87 above.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

No.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

But not as a matter of principle, as the disclosure of case files would invariably be provided to the suspect's legal representative in preparation for any court proceedings.

Scots law holds that the Crown (prosecution) has an obligation to disclose to the defence all material evidence which either incriminates or exculpates the accused or, put another way, supports or weakens the Crown case. The obligation is limited to all material evidence and not to all evidence in possession and knowledge of the Crown and does not, for example, include incriminating evidence that the Crown does not seek to rely upon. The duty of disclosure includes all statements by persons on the list of witnesses (either prosecution or defence) and their previous convictions. It does not extend to Crown precognitions. Relevant precedent is to be found in *McLeod v HMA* 1998 JC 67 and *Holland v HMA* 2005 UKPC D1 and *Sinclair v HMA* 2005 UKPC D2. (Note - this may be placed on a statutory footing in future. This matter is currently being considered by the Scottish Parliament)

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment -
- b. the detention order -
- c. the reasons for detention -
- d. the final judgment (sentence) -
- e. parts of the case file -
- f. other documents, please specify [...] - Yes. As 92 above.

In Scotland, the suspect is not provided with disclosure of documents others than the indictment. These are provided to his legal representative as there are issues of data protection involved. An unrepresented suspect is provided with access to the relevant statements/productions or via the court by way of a protective order to ensure that the information provided is not abused.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

PACE Code C section 10.5 states the terms of the caution given to suspects: "you do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence".

However, an inference can be drawn from silence (section 34 Criminal Justice and Public Order Act 1994).

The same is true in court (Section 35 of the Criminal Justice and Public Order Act 1994).

The right to silence is also a common law right. In Scotland, The detainee is under no obligation to answer any questions other than to give his name and address, date of birth, place of birth and nationality and he must be so informed on his detention and on his arrival at the police station or other premises.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Under PACE Code of Practice C, section 3.2, the detainee must be given the caution in terms prescribed in section 10.

The terms of the caution are as follows: "You do not have to say anything. but it may harm your defence if you do not mention when questioned something which you later rely on in court. anything you say may be given in evidence".

A similar warning is given in the courts.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The person will be informed on arrest of his/her right to remain silent. The right also arises at the commencement or re-commencement of the interview with the detainee. See response to 99a for courts.

101 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights - Yes.

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Common law and PACE Code of Practice C, section 13, on the provision of interpreters would apply here, as well as the provisions about the notice of entitlements being translated into 44 languages.

Similar rules apply in court.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Common law and Human Rights Act 1998 which incorporates article 6(3)(d) into law and provides: the person charged with a criminal offence has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

It should be noted however that in Scottish legislation the accused does not have a right to personally examine a witness (Sections 288C, & 288E of the Criminal Procedure (Scotland) Act 1995) involving certain sexual offences, including rape. In such cases, the accused is required to be legally represented throughout his or her trial. Warnings and preliminary stages are built into the criminal justice process to ensure that the accused is made aware in good time of the need for legal representation and to encourage him or her to appoint a solicitor of his or her choice, who can then instruct counsel in the normal way if required. Where the accused does not do this, then a solicitor will be appointed by the court.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

There is not a right as such but it is good practice in the courts to inform defendants of their right to call and examine witnesses. This is done as a matter of course at the beginning of the proceedings.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
At the beginning of the courts proceedings.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

An interpreter will be appointed to translate the whole of the proceedings.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Partly.

See the detailed response to 115 below:

In terms of the right to be informed of the procedures in relation to the EAW, the Extradition Act 2003 section 8(3) requires the Court to advise the fugitive of his right to consent to surrender and the irrevocable effect of his giving that consent. The Court is also obliged to ensure the fugitive is the person to whom the EAW relates (Extradition Act section 7(2)). The Court must also ensure the fugitive has been given a copy of the EAW (for which can be understood the charge he is to face) (but not specified to be in his own language) and that the person is brought as soon as practicable after arrest before the Court (Extradition Act section 4 refers). The Court has discretion and is obliged to discharge the person from the hearing in consequence of non compliance respectively.

The Extradition Act 2003 section 7(7) also requires that in Scotland, the "Judge has the same powers (as nearly as may be) as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by the person".

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- | | |
|---|--------|
| a. information on the charge | - Yes. |
| b. information on access to the file | - |
| c. information on the right to remain silent | - |
| d. information on the right to call/examine witnesses and experts | - |

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

A priori all normal procedural safeguards apply to mutual recognition instruments. However this is not applicable because the FD has not yet been implemented.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b *(Check any that apply)*

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Partly.

See answer to 5.2.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. *(Check any that apply)*

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

See answer to 5.2

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

ESTONIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁵⁷

yes

Criminal Procedure Code

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

3) the assistance of a counsel;

4) confer with the counsel without the presence of other persons;

5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

§ 217. Detention of suspect

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

⁵⁷ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

- 3) the assistance of a counsel;
- 4) confer with the counsel without the presence of other persons;
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;
- 2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

§ 217. Detention of suspect

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

(3) All documents which are requested to be included in a criminal file shall be in Estonian or translated into Estonian.

(4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be annexed to the minutes.

(5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

§ 43. Choice and appointment of counsel

- (1) In a criminal proceeding, a suspect and the accused may choose a counsel personally or through another person.
- (2) A counsel shall be appointed by an investigative body, Prosecutor's Office or court, if:
 - 1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;
 - 2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;
 - 3) a counsel chosen by a person cannot assume the duties of defence within twelve hours as of the detention of the person as a suspect or, in other cases, within twenty-four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

§ 34. Rights and obligations of suspects

- (1) A suspect has the right to:
 - 3) the assistance of a counsel;
 - 4) confer with the counsel without the presence of other persons;
 - 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;
- (2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

012 - Consultation (in person or by telephone) is possible before questioning by the police⁵⁸?

Yes.

§ 34. Rights and obligations of suspects

- (1) A suspect has the right to:

⁵⁸ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

- 3) the assistance of a counsel;
- 4) confer with the counsel without the presence of other persons;
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

(2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

§ 47. Rights and obligations of counsel

- (1) A counsel has the right to:
- 6) participate in the investigative activities carried out in the presence of the person being defended during the pre-trial proceeding, and pose questions through the body conducting the proceedings;
- 8) confer with the person being defended without the presence of other persons for an unlimited number of times with unlimited duration unless a different duration of the conference is provided for in this Code.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁵⁹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

⁵⁹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

§ 34. Rights and obligations of suspects

- (1) A suspect has the right to:
- 3) the assistance of a counsel;
- 4) confer with the counsel without the presence of other persons;
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

§ 47. Rights and obligations of counsel

- (1) A counsel has the right to:
- 6) participate in the investigative activities carried out in the presence of the person being defended during the pre-trial proceeding, and pose questions through the body conducting the proceedings;

022 (Check any that apply)

If so, does this right cover:

- | | |
|--|--------|
| a. questioning by the police | - Yes. |
| b. questioning by the prosecutor | - Yes. |
| c. questioning by the investigating judge | - Yes. |
| d. questioning by other officials, please specify [...] | - |

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

3) the assistance of a counsel;

4) confer with the counsel without the presence of other persons;

5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

§ 63. Evidence

(1) "Evidence" means the statements of a suspect, accused or victim, the testimony of a witness, an expert's opinion, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, the reports on investigative activities, minutes of court sessions and the reports on surveillance activities, and any other documents, photographs, films or other data recordings.

(2) Evidence not listed in subsection (1) of this section may also be used in order to prove the facts relating to a criminal proceeding.

§ 64. General conditions for collection of evidence

(1) Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person's memory capacity or degrading his or her human dignity.

(2) If it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person.

(3) If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them.

(4) Investigative bodies and Prosecutors' Offices may involve impartial specialists in the collection of evidence and the specialists may be heard as witnesses.

(5) If necessary, participants in a procedural act shall be warned that pursuant to § 214 of this Code disclosure of information relating to pre-trial proceedings is prohibited.

(6) The general conditions for the collection of evidence by surveillance activities are listed in §§ 110–112 of this Code.

§ 45. Participation of counsel in criminal proceedings

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings.

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:

1) at the time of commission of the criminal offence, the person being defended was a minor;

- 2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
 - 3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
 - 4) the interests of the person are in conflict with the interests of another person who has a counsel;
 - 5) the person has been under arrest for at least six months;
 - 6) proceedings are conducted in the criminal matter pursuant to expedited procedure.
- (3) The participation of a counsel in a pre-trial proceeding is mandatory as of presentation of the criminal file for examination pursuant to the procedure provided for in subsection 223 (3) of this Code.
- (4) The participation of a counsel in a court proceeding is mandatory.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

§ 148. Annex to report of investigative activities or other procedural acts

- (1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activity or other procedural act, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.
- (2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

§ 150. Films and audio and video recordings

- (1) An investigative activity or any other procedural act or a distinct part thereof may be filmed or recorded on audio or video. The witness or the participant in the proceedings shall be notified thereof before the commencement of the investigative activity or other procedural act.
- (2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of an investigative activity or other procedural act, the recording shall be submitted to the participants in the investigative activity or procedural act for listening or watching.
- (3) Report shall be made of an investigative activity or any other procedural act on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.
- (4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

030 - If so, how many copies of the audio recording are made?

§ 150. Films and audio and video recordings

- (4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

031 - If so, who is entitled to receive a copy of the audio recording?

§ 150. Films and audio and video recordings

(4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

032 - Is the questioning of the suspect video recorded?

Sometimes.

§ 148. Annex to report of investigative activities or other procedural acts

(1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activity or other procedural act, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.

(2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

§ 150. Films and audio and video recordings

(1) An investigative activity or any other procedural act or a distinct part thereof may be filmed or recorded on audio or video. The witness or the participant in the proceedings shall be notified thereof before the commencement of the investigative activity or other procedural act.

(2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of an investigative activity or other procedural act, the recording shall be submitted to the participants in the investigative activity or procedural act for listening or watching.

(3) Report shall be made of an investigative activity or any other procedural act on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.

(4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

033 - If so, how many copies of the video recording are made?

§ 150. Films and audio and video recordings

(4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

034 - If so, who is entitled to receive a copy of the video recording?

§ 150. Films and audio and video recordings

(4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

§ 43. Choice and appointment of counsel

(1) In a criminal proceeding, a suspect and the accused may choose a counsel personally or through another person.

(2) A counsel shall be appointed by an investigative body, Prosecutor's Office or court, if:

1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;

2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;

State Legal Aid Act

§ 4. State legal aid

(1) State legal aid is the provision of legal services to a natural or legal person at the expense of the state on the bases and pursuant to the procedure provided for in this Act.

(2) Pursuant to this Act, state legal aid is granted to natural or legal persons in connection with proceedings in an Estonian court or administrative authority or in the protection of their interests in any other manner, if deciding thereon is within the competence of the Estonian court, unless otherwise provided for in Chapter 7 of this Act.

(3) The categories of state legal aid are:

1) appointed defence in criminal proceedings;

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁶⁰?

Yes.

§ 45. Participation of counsel in criminal proceedings

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings.

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:

1) at the time of commission of the criminal offence, the person being defended was a minor;

⁶⁰ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

- 2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
 - 3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
 - 4) the interests of the person are in conflict with the interests of another person who has a counsel;
 - 5) the person has been under arrest for at least six months;
 - 6) proceedings are conducted in the criminal matter pursuant to expedited procedure.
- (3) The participation of a counsel in a pre-trial proceeding is mandatory as of presentation of the criminal file for examination pursuant to the procedure provided for in subsection 223 (3) of this Code.
- (4) The participation of a counsel in a court proceeding is mandatory.

037 - Is there a means test⁶¹?

No.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms -
- b. any rules on what documentation should be provided, please specify rules [...] -
- c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

§ 33. Suspect

- (2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

- (1) A suspect has the right to:

⁶¹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

- 3) the assistance of a counsel;
- 4) confer with the counsel without the presence of other persons;
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police - Yes.
- b. prosecutor - Yes.
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

No.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. § 42. Counsel

(1) In a criminal proceeding, the counsel is:

- 1) an advocate or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by this Act and whose competence in the criminal proceeding is based on an agreement with the person being defended (contractual counsel), or
- 2) an advocate whose competence in the criminal proceeding is based on an appointment by the body conducting the proceedings, Prosecutor's Office or court (appointed counsel).

§ 43. Choice and appointment of counsel

- (1) In a criminal proceeding, a suspect and the accused may choose a counsel personally or through another person.
- (2) A counsel shall be appointed by an investigative body, Prosecutor's Office or court, if:
 - 1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;
 - 2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;
 - 3) a counsel chosen by a person cannot assume the duties of defence within twelve hours as of the detention of the person as a suspect or, in other cases, within twenty-four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

NB! Since 01.01.2010 there will be a different procedure with regard to the appointed counsels. According to the new amendment investigative body, Prosecutor's Office or court makes a request to the Estonian Bar Association and they will appoint the defence lawyer.

h.

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor - Yes.
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]-

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

According to amendments to the State Legal Aid Act the exact remuneration and fares in detail will be decided by Bar Association for each year.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

§ 175. Procedural expenses

(1) The following are procedural expenses:

- 1) reasonable remuneration paid to the chosen counsel or representative and other necessary expenses incurred by a participant in a proceeding in connection with the criminal proceeding;
- 4) remuneration paid to an appointed counsel;

§ 180. Compensation for procedural expenses in case of conviction

- (1) In the case of a conviction, procedural expenses shall be compensated for by the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.
- (2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.
- (3) When determining procedural expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedural expenses, the court shall order a part of the expenses to be borne by the state.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

For the year 2008 it was 47 917 000 EEK

Currency rate is 1 EUR = 15, 646 EEK

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Not available

055 - What is the size of the population of your country?

1 340 000

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

§ 42. Counsel

(1) In a criminal proceeding, the counsel is:

- 1) an advocate or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by this Act and whose competence in the criminal proceeding is based on an agreement with the person being defended (contractual counsel), or

2) an advocate whose competence in the criminal proceeding is based on an appointment by the body conducting the proceedings, Prosecutor's Office or court (appointed counsel).

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?
No.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁶²?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect⁶³ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. § 45. Participation of counsel in criminal proceedings

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings.

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:

- 1) at the time of commission of the criminal offence, the person being defended was a minor;
- 2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
- 3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
- 4) the interests of the person are in conflict with the interests of another person who has a counsel;
- 5) the person has been under arrest for at least six months;
- 6) proceedings are conducted in the criminal matter pursuant to expedited procedure.

⁶² Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁶³ Blindness, deafness et cetera.

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

§ 180. Compensation for procedural expenses in case of conviction

- (1) In the case of a conviction, procedural expenses shall be compensated for by the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.
- (2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.
- (3) When determining procedural expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedural expenses, the court shall order a part of the expenses to be borne by the state.

§ 181. Compensation for procedural expenses in case of acquittal

- (1) In the case of an acquittal, procedural expenses shall be compensated for by the state, taking into account the exceptions provided in § 182 of this Code.
- (2) A person who has been acquitted shall reimburse any procedural expenses caused by the person's wrongful failure to perform his or her obligations or false admission of guilt.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

§ 10. Language of criminal proceedings

- (1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.
- (2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.
- (3) All documents which are requested to be included in a criminal file shall be in Estonian or translated into Estonian.
- (4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be annexed to the minutes.
- (5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

§ 161. Translators and interpreters

- (1) If a text in a foreign language needs to be translated or interpreted or if a participant in a criminal proceeding is not proficient in Estonian, a translator or interpreter shall be involved in the proceeding.
- (2) A translator or interpreter is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of a translator or interpreter.
- (3) A translator or interpreter who is not a sworn translator or interpreter shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false translation or interpretation.
- (4) If a translator or interpreter does not participate in a procedural act where the participation of a translator or interpreter is mandatory, the act is null and void.
- (5) In order to ensure the correctness of a translation or interpretation, the translator or interpreter has the right to pose questions to the participants in the proceedings, examine the report of procedural acts and make statements concerning the report, and record shall be made of such statements.
- (6) A translation or interpretation of any aspect of a procedural act rendered by a translator or interpreter shall be precise and complete. If a non-staff translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

§ 10. Language of criminal proceedings

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the

criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.

- (2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.
- (3) All documents which are requested to be included in a criminal file shall be in Estonian or translated into Estonian.
- (4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be annexed to the minutes.
- (5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

§ 161. Translators and interpreters

- (1) If a text in a foreign language needs to be translated or interpreted or if a participant in a criminal proceeding is not proficient in Estonian, a translator or interpreter shall be involved in the proceeding.
- (2) A translator or interpreter is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of a translator or interpreter.
- (3) A translator or interpreter who is not a sworn translator or interpreter shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false translation or interpretation.
- (4) If a translator or interpreter does not participate in a procedural act where the participation of a translator or interpreter is mandatory, the act is null and void.
- (5) In order to ensure the correctness of a translation or interpretation, the translator or interpreter has the right to pose questions to the participants in the proceedings, examine the report of procedural acts and make statements concerning the report, and record shall be made of such statements.
- (6) A translation or interpretation of any aspect of a procedural act rendered by a translator or interpreter shall be precise and complete. If a non-staff translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

§ 161. Translators and interpreters

(2) A translator or interpreter is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of a translator or interpreter.

(6) A translation or interpretation of any aspect of a procedural act rendered by a translator or interpreter shall be precise and complete. If a non-staff translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁶⁴

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

§ 33. Suspect

(1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient ground to suspect of the commission of a criminal offence and who is subject to a procedural act.

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

§ 33. Suspect

(1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient ground to suspect of the commission of a criminal offence and who is subject to a procedural act.

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;

⁶⁴ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings
§ 33. Suspect

- (1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient ground to suspect of the commission of a criminal offence and who is subject to a procedural act.
- (2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

- (1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.
- (2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.
- (3) All documents which are requested to be included in a criminal file shall be in Estonian or translated into Estonian.
- (4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be annexed to the minutes.
- (5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

No.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) -
- e. parts of the case file -
- f. other documents, please specify [...] - Yes. § 34. Rights and obligations of suspects

(1) A suspect has the right to:

9) examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements;

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;

2) know that his or her testimony may be used in order to bring charges against him or her;

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

§ 33. Suspect

(1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient ground to suspect of the commission of a criminal offence and who is subject to a procedural act.

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 217. Detention of suspect

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

§ 34. Rights and obligations of suspects

- (1) A suspect has the right to:
 - 7) submit evidence;
 - 8) submit requests and complaints;

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

§ 33. Suspect

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

§ 10. Language of criminal proceedings

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

FINLAND

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁶⁵

yes

According to Section 10, Criminal Investigations Act a suspect that has been arrested has to be informed without delay of his/her right to contact a lawyer.

Answer to question 5: orally or in writing

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Section 10, Criminal Investigations Act

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

According to Section 37(3), Criminal Investigations Act the suspect has right to interpretation. Also, according to Chapter 2, Section 3, Act on the Treatment of Persons in Police Custody foreigners shall be offered assistance from interpreters.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

⁶⁵ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Chapter 2, Section 2(2), Criminal Procedure Act: When the suspect or the injured party has self nominated a person meeting the qualifications as defence counsel or counsel for the injured party, the nominee is to be appointed unless there are special reasons for the contrary.

Section 8(2) Legal Aid Act: Where the person receiving legal aid has self nominated an eligible person as his or her attorney, that person shall be appointed unless there are special reasons to the contrary.

Section 45, Criminal Investigations Act

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Chapter 6, Section 7(3) and Chapter 7, Section 1(3), Act on the Treatment of Persons in Police Custody

012 - Consultation (in person or by telephone) is possible before questioning by the police⁶⁶?

Yes.

Section 10(3), Criminal Investigations Act

Chapter 6, Section 6(2) and Chapter 7, Section 1(1), Act on the Treatment of Persons in Police Custody

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁶⁷?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

⁶⁶ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

⁶⁷ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Section 31, Criminal Investigations Act: The lawyer's right to be present during questioning may be limited only for important reasons related to the criminal investigation.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** -
- d. questioning by other officials, please specify [...]** -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions - Yes.
- c. make remarks -
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Sections 10 and 29(2), Criminal Investigations Act

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Section 37(3), Criminal Investigations Act

Chapter 2, Section 3, Act on the Treatment of Persons in Police Custody

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

One of the fundamental principles of Finnish judicial procedure is the principle of free evaluation of evidence. It means that it is in the discretion of the court to evaluate the significance of the evidence.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Section 39(3), Criminal Investigations Act

Questioning is taped, if needed.

030 - If so, how many copies of the audio recording are made?

Unlimited number of copies.

031 - If so, who is entitled to receive a copy of the audio recording?

Parties involved can get copies.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Section 39(3), Criminal Investigations Act

Questioning is sometimes, especially with children, videotaped.

033 - If so, how many copies of the video recording are made?

Unlimited number of copies.

034 - If so, who is entitled to receive a copy of the video recording?

Parties involved can get copies.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

The provisions on legal aid are in the Legal Aid Act (257/2002).

(available in English www.finlex.fi)

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁶⁸?

No.

037 - Is there a means test⁶⁹?

Yes.

Sections 1(1) and 6(2), Legal Aid Act

As a general principle, legal aid is granted in all criminal cases. However, no attorney is appointed to the defendant in simple criminal cases sanctioned with a fine.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms - Yes.

b. any rules on what documentation should be provided, please specify rules [...] Yes. Section 1, Government Decree on Legal Aid

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

⁶⁸ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

⁶⁹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Section 29(2), Criminal Investigations Act

Chapter 2, Section 3, Act on the Treatment of Persons in Police Custody

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Section 37(3), Criminal Investigations Act

Chapter 2, Section 3, Act on the Treatment of Persons in Police Custody

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board -
- e. other authority, please specify authority [...] Yes. state legal aid office

Section 11, Legal Aid Act

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

A rejected application can be submitted to the court for a hearing.

Section 24, Legal Aid Act

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Section 8, Legal Aid Act

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
 - b. Judge - Yes.
 - c. lawyer's professional organisation (bar) -
 - d. legal aid board -
 - e. other authority, please specify authority [...] - Yes. state legal aid office
- Sections 9, 11 and 14, Legal Aid Act

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per hour.

100 euros per hour, Section 6, Government Decree on Legal Aid Fee Criteria (290/2008)

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

The minimum amount in a criminal matter is 400 euros, and if the hearing takes more than 3 hours, 600 euros. Section 7, Government Decree on Legal Aid Fee Criteria (290/2008)

Legal aid covers at most 100 hours and as from 1 December 2009 80 hours. Section 5(2), Legal Aid Act

052 - Is the suspect obliged to pay a financial contribution?

Yes.

That depends on the financial situation of the suspect. According to Section 5 of the Government Decree on Legal Aid the suspect has to pay 0-75 % of the fee of the attorney. The percentage depends on the available means of the suspect.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

33,3 million euros

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

not available

055 - What is the size of the population of your country?

5,3 million

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Legal aid can be given either by a public legal aid attorney working at the state legal aid office or a private attorney. A private attorney may be either an advocate (member of the Bar Association) or another lawyer.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...] - Yes. The activities of public legal aid attorneys and advocates are supervised by the Bar Association and the Chancellor of Justice. Furthermore, all attorneys are under the supervision of the court.

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁷⁰?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect - Yes.

b. mental capacity of the suspect - Yes.

c. physical handicaps of the suspect⁷¹ -

d. deprivation of liberty of the suspect - Yes.

e. factual complexity of the case -

f. legal complexity of the case -

g. severity of the sanction that can be imposed - Yes.

h. other circumstances, please specify [...] - Yes. Chapter 2, Section 1, Criminal Procedure Act

- defence counsel is incapable of defending the suspect

- another special reason

Points d (deprivation of liberty) and g (severity of the sanction) on the request of the suspect.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

Chapter 2, Sections 10 and 11, Criminal Procedure Act

The fee of the public defender is paid by the state. However, if the person is convicted of the offence, he or she must compensate the state for the public defender's fee, unless his or her means qualify him or her for legal aid.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

⁷⁰ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁷¹ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Chapter 6a, Section 2(3), Criminal Procedure Act

Section 37(3), Criminal Investigations Act

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. There are no specific provisions in Finnish legislation on this question, except for Chapter 6a, Section 2(3), Criminal Procedure Act (translation of judgment or decision).

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Section 37(3), Criminal Investigations Act

Chapter 6a, Section 2(3), Criminal Procedure Act

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Each police station has a list of translators/interpreters that can be called for assistance when needed.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

Each court has a list of translators/interpreters that can be called for assistance when needed.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Section 8a, Act on Services and Assistance for the Disabled (380/1987)

Section 37(3), Criminal Investigations Act

Chapter 2, Section 3, Act on the Treatment of Persons in Police Custody provides that disabled persons shall be offered assistance from interpreters.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

See answer to question 81.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁷²

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 29(1), Criminal Investigations Act

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

No.

089 - When does the duty to inform the suspect of this right arise for the first time?

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Section 11, Criminal Investigations Act:

The suspect has the right to know the results of investigations as soon as possible without compromising the investigations.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

⁷² The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

There is no specific provision on the right to remain silent.

Section 7, Criminal Investigations Act states that everyone must be treated as innocent in pre-trial investigations.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

No.

100 - When does the duty to inform the suspect of this right arise?

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Sections 12 and 34, Criminal Investigations Act

Chapter 5, Section 9, Criminal Procedure Act

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

FRANCE

CHAPTER 1 THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁷³

yes

Article 63-1 du CPP : "Toute personne placée en garde à vue est immédiatement informée par un officier de police judiciaire, ou, sous le contrôle de celui-ci, par un agent de police judiciaire, de la nature de l'infraction sur laquelle porte l'enquête, des droits mentionnés aux articles 63-2, 63-3 et 63-4 ainsi que des dispositions relatives à la durée de la garde à vue prévues par l'article 63.

"

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Article 63-1 du CPP:

"Toute personne placée en garde à vue est immédiatement informée par un officier de police judiciaire, ou, sous le contrôle de celui-ci, par un agent de police judiciaire, de la nature de l'infraction sur laquelle porte l'enquête, des droits mentionnés aux articles 63-2, 63-3 et 63-4 ainsi que des dispositions relatives à la durée de la garde à vue prévues par l'article 63.

Mention de cet avis est portée au procès-verbal et émargée par la personne gardée à vue ; en cas de refus d'émargement, il en est fait mention.

Les informations mentionnées au premier alinéa doivent être communiquées à la personne gardée à vue dans une langue qu'elle comprend, le cas échéant au moyen de formulaires écrits.

Si cette personne est atteinte de surdit  et qu'elle ne sait ni lire ni  crire, elle doit  tre assist e par un interpr te en langue des signes ou par toute personne qualifi e ma trisant un langage ou une m thode permettant de communiquer avec des sourds. Il peut  galement  tre recouru   tout dispositif technique permettant de communiquer avec une personne atteinte de surdit .

Si la personne est remise en libert    l'issue de la garde   vue sans qu'aucune d cision n'ait  t e prise par le procureur de la R publique sur l'action publique, les dispositions de l'article 77-2 sont port es   sa connaissance.

Sauf en cas de circonstance insurmontable, les diligences r sultant pour les enqu teurs de la communication des droits mentionn s aux articles 63-2 et 63-3 doivent intervenir au plus tard dans un d lai de trois heures   compter du moment o  la personne a  t e plac e en garde   vue."

⁷³ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Article 63-1 du CPP

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

Yes.

008 - If so, please specify on which grounds:

Article 706-88 du CPP: "Pour l'application des articles 63, 77 et 154, si les nécessités de l'enquête ou de l'instruction relatives à l'une des infractions entrant dans le champ d'application de l'article 706-73 l'exigent, la garde à vue d'une personne peut, à titre exceptionnel, faire l'objet de deux prolongations supplémentaires de vingt-quatre heures chacune.

Ces prolongations sont autorisées, par décision écrite et motivée, soit, à la requête du procureur de la République, par le juge des libertés et de la détention, soit par le juge d'instruction.

La personne gardée à vue doit être présentée au magistrat qui statue sur la prolongation préalablement à cette décision. La seconde prolongation peut toutefois, à titre exceptionnel, être autorisée sans présentation préalable de la personne en raison des nécessités des investigations en cours ou à effectuer.

Lorsque la première prolongation est décidée, la personne gardée à vue est examinée par un médecin désigné par le procureur de la République, le juge d'instruction ou l'officier de police judiciaire. Le médecin délivre un certificat médical par lequel il doit notamment se prononcer sur l'aptitude au maintien en garde à vue, qui est versé au dossier. La personne est avisée par l'officier de police judiciaire du droit de demander un nouvel examen médical. Ces examens médicaux sont de droit. Mention de cet avis est portée au procès-verbal et émargée par la personne intéressée ; en cas de refus d'émargement, il en est fait mention.

Par dérogation aux dispositions du premier alinéa, si la durée prévisible des investigations restant à réaliser à l'issue des premières quarante-huit heures de garde à vue le justifie, le juge des libertés et de la détention ou le juge d'instruction peuvent décider, selon les modalités prévues au deuxième alinéa, que la garde à vue fera l'objet d'une seule prolongation supplémentaire de quarante-huit heures.

La personne dont la garde à vue est prolongée en application des dispositions du présent article peut demander à s'entretenir avec un avocat, selon les modalités prévues par l'article 63-4, à l'issue de la quarante-huitième heure puis de la soixante-douzième heure de la mesure ; elle est avisée de ce droit lorsque la ou les prolongations lui sont notifiées et mention en est portée au procès-verbal et émargée par la personne intéressée ; en cas de refus d'émargement, il en est fait mention. Toutefois, lorsque l'enquête porte sur une infraction entrant dans le champ d'application des 3° et 11° de l'article 706-73, l'entretien avec un avocat ne peut intervenir qu'à l'issue de la soixante-douzième heure.

S'il ressort des premiers éléments de l'enquête ou de la garde à vue elle-même qu'il existe un risque sérieux de l'imminence d'une action terroriste en France ou à l'étranger ou que les nécessités de la coopération internationale le requièrent impérativement, le juge des libertés peut, à titre exceptionnel et selon les modalités prévues au deuxième alinéa, décider que la garde à vue en cours d'une personne, se

fondant sur l'une des infractions visées au 11° de l'article 706-73, fera l'objet d'une prolongation supplémentaire de vingt-quatre heures, renouvelable une fois.

A l'expiration de la quatre-vingt-seizième heure et de la cent-vingtième heure, la personne dont la prolongation de la garde à vue est ainsi décidée peut demander à s'entretenir avec un avocat, selon les modalités prévues par l'article 63-4. La personne gardée à vue est avisée de ce droit dès la notification de la prolongation prévue au présent article.

Outre la possibilité d'examen médical effectué à l'initiative du gardé à vue, dès le début de chacune des deux prolongations supplémentaires, il est obligatoirement examiné par un médecin désigné par le procureur de la République, le juge d'instruction ou l'officier de police judiciaire. Le médecin requis devra se prononcer sur la compatibilité de la prolongation de la mesure avec l'état de santé de l'intéressé.

S'il n'a pas été fait droit à la demande de la personne gardée à vue de faire prévenir, par téléphone, une personne avec laquelle elle vit habituellement ou l'un de ses parents en ligne directe, l'un de ses frères et soeurs ou son employeur, de la mesure dont elle est l'objet, dans les conditions prévues aux articles 63-1 et 63-2, elle peut réitérer cette demande à compter de la quatre-vingt-seizième heure.

009 - If so, please specify for which period of time?

Up to [...] hours after arrest

48H

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Article 63-4 du CPP : "Dès le début de la garde à vue, la personne peut demander à s'entretenir avec un avocat. Si elle n'est pas en mesure d'en désigner un ou si l'avocat choisi ne peut être contacté, elle peut demander qu'il lui en soit commis un d'office par le bâtonnier.

Le bâtonnier est informé de cette demande par tous moyens et sans délai.

L'avocat désigné peut communiquer avec la personne gardée à vue dans des conditions qui garantissent la confidentialité de l'entretien. Il est informé par l'officier de police judiciaire ou, sous le contrôle de celui-ci, par un agent de police judiciaire de la nature et de la date présumée de l'infraction sur laquelle porte l'enquête.

A l'issue de l'entretien dont la durée ne peut excéder trente minutes, l'avocat présente, le cas échéant, des observations écrites qui sont jointes à la procédure.

L'avocat ne peut faire état de cet entretien auprès de quiconque pendant la durée de la garde à vue.

Lorsque la garde à vue fait l'objet d'une prolongation, la personne peut également demander à s'entretenir avec un avocat dès le début de la prolongation, dans les conditions et selon les modalités prévues aux alinéas précédents.

Si la personne est gardée à vue pour une infraction mentionnée aux 4°, 6°, 7°, 8° et 15° de l'article 706-73, l'entretien avec un avocat ne peut intervenir qu'à l'issue d'un délai de quarante-huit heures. Si elle est gardée à vue pour une infraction mentionnée aux 3° et 11° du même article, l'entretien avec un avocat ne peut intervenir qu'à l'issue d'un délai de soixante-douze heures. Le procureur de la République est avisé de la qualification des faits retenue par les enquêteurs dès qu'il est informé par ces derniers du placement en garde à vue.

1.2 Consultation

**Is the suspect guaranteed an adequate opportunity to consult with his lawyer?
More specifically, is it guaranteed that:**

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Il n'y a pas de disposition particulière dans la loi

012 - Consultation (in person or by telephone) is possible before questioning by the police⁷⁴?

Yes.

Il ne s'agit pas d'un "droit" de consulter son avocat. En l'absence de l'avocat, la personne peut être entendue par la police.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

Yes.

30 minutes (Article 63-4 du CPP 4ème alinéa: "A l'issue de l'entretien dont la durée ne peut excéder trente minutes, l'avocat présente, le cas échéant, des observations écrites qui sont jointes à la procédure.")

016 - Can the lawyer visit his client detained in prison⁷⁵?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

⁷⁴ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

⁷⁵ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Durant les interrogatoires de police, non.

Durant tous les actes de la procédure judiciaire : oui toujours

022 (Check any that apply)

If so, does this right cover:

a. questioning by the police

-

b. questioning by the prosecutor

- Yes.

c. questioning by the investigating judge

- Yes.

d. questioning by other officials, please specify [...]

- Yes. Présence de l'avocat obligatoire devant le

juge d'instruction article 114 du CPP : "Les parties ne peuvent être entendues, interrogées ou confrontées, à moins qu'elles n'y renoncent expressément, qu'en présence de leurs avocats ou ces derniers dûment appelés.

Les avocats sont convoqués au plus tard cinq jours ouvrables avant l'interrogatoire ou l'audition de la partie qu'ils assistent par lettre recommandée avec demande d'avis de réception, télécopie avec récépissé ou verbalement avec émargement au dossier de la procédure.

La procédure est mise à leur disposition quatre jours ouvrables au plus tard avant chaque interrogatoire de la personne mise en examen ou chaque audition de la partie civile. Après la première comparution de la personne mise en examen ou la première audition de la partie civile, la procédure est également mise à tout moment à la disposition des avocats durant les jours ouvrables, sous réserve des exigences du bon fonctionnement du cabinet d'instruction.

Après la première comparution ou la première audition, les avocats des parties peuvent se faire délivrer, à leurs frais, copie de tout ou partie des pièces et actes du dossier. Cette copie peut être adressée à

l'avocat sous forme numérisée, le cas échéant par un moyen de télécommunication selon les modalités prévues à l'article 803-1. La délivrance de cette copie doit intervenir dans le mois qui suit la demande.

Les avocats peuvent transmettre une reproduction des copies ainsi obtenues à leur client. Celui-ci atteste au préalable, par écrit, avoir pris connaissance des dispositions de l'alinéa suivant et de l'article 114-1.

Seules les copies des rapports d'expertise peuvent être communiquées par les parties ou leurs avocats à des tiers pour les besoins de la défense.

L'avocat doit donner connaissance au juge d'instruction, par déclaration à son greffier ou par lettre ayant ce seul objet et adressée en recommandé avec accusé de réception, de la liste des pièces ou actes dont il souhaite remettre une reproduction à son client.

Le juge d'instruction dispose d'un délai de cinq jours ouvrables à compter de la réception de la demande pour s'opposer à la remise de tout ou partie de ces reproductions par une ordonnance spécialement motivée au regard des risques de pression sur les victimes, les personnes mises en examen, leurs avocats, les témoins, les enquêteurs, les experts ou toute autre personne concourant à la procédure.

Cette décision est notifiée par tout moyen et sans délai à l'avocat. A défaut de réponse du juge d'instruction notifiée dans le délai imparti, l'avocat peut communiquer à son client la reproduction des pièces ou actes dont il avait fourni la liste. Il peut, dans les deux jours de sa notification, déférer la décision du juge d'instruction au président de la chambre de l'instruction, qui statue dans un délai de cinq jours ouvrables par une décision écrite et motivée, non susceptible de recours. A défaut de réponse notifiée dans le délai imparti, l'avocat peut communiquer à son client la reproduction des pièces ou actes mentionnés sur la liste.

Les modalités selon lesquelles ces documents peuvent être remis par son avocat à une personne détenue et les conditions dans lesquelles cette personne peut détenir ces documents sont déterminées par décret en Conseil d'Etat.

Par dérogation aux dispositions des huitième et neuvième alinéas, l'avocat d'une partie civile dont la recevabilité fait l'objet d'une contestation ne peut transmettre à son client une reproduction des pièces ou actes de la procédure sans l'autorisation préalable du juge d'instruction, qui peut lui être notifiée par tout moyen. En cas de refus du juge d'instruction ou à défaut de réponse de ce dernier dans les cinq jours ouvrables, l'avocat peut saisir le président de la chambre de l'instruction, qui statue dans un délai de cinq jours ouvrables, par une décision écrite et motivée non susceptible de recours. En l'absence d'autorisation préalable du président de la chambre de l'instruction, l'avocat ne peut transmettre la reproduction de pièces ou actes de la procédure à son client."

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** - Yes. Remise de pièces et/ou de documents par exemple

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Article 114 alinéa 1 du CPP (déjà cité)

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

Première comparution devant le juge d'instruction

026 (Check any that apply)

If so, how should the suspect be informed of this right?

a. Orally - Yes.

b. In writing - Yes.

c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Droits de la défense communiquer avec la personne mise en cause dans une langue qu'elle comprend.

(CEDH et jurisprudence de la C.Cass)

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

L'absence de l'avocat n'a aucune incidence sur la valeur de l'interrogatoire

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

Sometimes.

En certaines matières, et dans certains cas (mineurs) les interrogatoires doivent être enregistrés sur vidéo

033 - If so, how many copies of the video recording are made?

aucune

034 - If so, who is entitled to receive a copy of the video recording?

personne

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Loi du 10 juillet 1991 relative à l'aide juridictionnelle :

Article 2 : "Les personnes physiques dont les ressources sont insuffisantes pour faire valoir leurs droits en justice peuvent bénéficier d'une aide juridictionnelle. Cette aide est totale ou partielle.

Son bénéfice peut être exceptionnellement accordé aux personnes morales à but non lucratif ayant leur siège en France et ne disposant pas de ressources suffisantes.

Aux mêmes conditions, il peut être accordé aux syndicats de copropriétaires d'immeubles soumis à la loi n° 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis, lorsque l'immeuble fait l'objet d'un plan de sauvegarde en application de l'article L. 615-1 du code de la construction et de l'habitation ou lorsqu'un administrateur provisoire est désigné en application de l'article 29-1 de la loi n° 65-557 du 10 juillet 1965 précitée, pour l'exercice des actions de recouvrement des créances tant en demande qu'en défense.

L'aide juridictionnelle n'est pas accordée lorsque les frais couverts par cette aide sont pris en charge au titre d'un contrat d'assurance de protection juridique ou d'un système de protection."

Article 10:

"L'aide juridictionnelle est accordée en matière gracieuse ou contentieuse, en demande ou en défense devant toute juridiction ainsi qu'à l'occasion de la procédure d'audition du mineur prévue par l'article 388-1 du code civil et de la procédure de comparution sur reconnaissance préalable de culpabilité prévue par les articles 495-7 et suivants du code de procédure pénale.

Elle peut être accordée pour tout ou partie de l'instance ainsi qu'en vue de parvenir à une transaction avant l'introduction de l'instance.

Elle peut également être accordée à l'occasion de l'exécution sur le territoire français, d'une décision de justice ou de tout autre titre exécutoire, y compris s'ils émanent d'un autre Etat membre de l'Union européenne à l'exception du Danemark.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁷⁶?

No.

⁷⁶ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

037 - Is there a means test⁷⁷?

Yes.

Non pour la garde à vue/

Pour les autres cas article 4 de la loi précitée:

"Le demandeur à l'aide juridictionnelle doit justifier, pour l'année 2001, que ses ressources mensuelles sont inférieures à 5 175 F [*francs*] pour l'aide juridictionnelle totale et à 7 764 F pour l'aide juridictionnelle partielle.

Ces plafonds sont affectés de correctifs pour charges de famille.

Ils sont revalorisés, au 1er janvier de chaque année, comme la tranche la plus basse du barème de l'impôt sur le revenu.

Les personnes bénéficiaires de l'allocation supplémentaire du Fonds national de solidarité ou du revenu minimum d'insertion sont dispensées de justifier de l'insuffisance de leurs ressources.

Pour les Français établis hors de France, les plafonds prévus par le premier alinéa sont établis par décret en Conseil d'Etat après avis de la commission permanente pour la protection sociale des Français de l'étranger.

Nota : Le plafond est modifié régulièrement.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms - Yes.
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...]

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

CPP

041 - When does the duty to inform the suspect of this right arise?

Within [...] hours after arrest

lors de la présentation devant le juge d'instruction

⁷⁷ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Article 63-1 CPP déjà cité

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police - Yes.
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

Avant la fin de la procédure (article 18 de la loi du 10 juillet 1991) sauf si l'avocat a été commis d'office et qu'il dépose lui-même la demande d'aide juridictionnelle (article 19 de la loi du 10 juillet 1991):

Article 18

L'aide juridictionnelle peut être demandée avant ou pendant l'instance.

Article 19

L'avocat commis ou désigné d'office dans les cas prévus par la loi peut saisir le bureau d'aide juridictionnelle compétent au lieu et place de la personne qu'il assiste ou qu'il a assistée.

046 - When a request is denied, is there a legal remedy?

Yes.

article 23 de la loi du 10 juillet 1991:

Les décisions du bureau d'aide juridictionnelle, de la section du bureau ou de leur premier président peuvent être déférées, selon le cas, au président de la cour d'appel ou de la Cour de cassation, au président de la cour administrative d'appel, au président de la section du contentieux du Conseil d'Etat, au vice-président du Tribunal des conflits, au président de la Cour nationale du droit d'asile ou au membre de la juridiction qu'ils ont délégué. Ces autorités statuent sans recours.

Les recours contre les décisions du bureau d'aide juridictionnelle peuvent être exercés par l'intéressé lui-même lorsque le bénéfice de l'aide juridictionnelle lui a été refusé, ne lui a été accordé que partiellement ou lorsque ce bénéfice lui a été retiré.

Dans tous les cas, ces recours peuvent être exercés par les autorités suivantes :

- le garde des sceaux, ministre de la justice, pour ceux qui sont intentés contre les décisions du bureau institué près le Conseil d'Etat ;

- le ministère public pour ceux qui sont intentés contre les décisions des autres bureaux ;

- le président de l'ordre des avocats au Conseil d'Etat et à la Cour de cassation pour ceux qui sont intentés contre les décisions des bureaux institués près ces juridictions et le bâtonnier pour ceux qui sont intentés contre les décisions des autres bureaux."

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Le mis en cause peut choisir son avocat. S'il n'en connaît pas, il peut demander l'assistance d'un avocat commis d'office.

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

Un barème de rétribution de l'avocat est prévu pour chaque type de procédure (article 90 du décret du 19 décembre 1991)

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Voir barème annexé

052 - Is the suspect obliged to pay a financial contribution?

Yes.

sauf pour la garde à vue pour laquelle l'intervention de l'avocat est systématiquement prise en charge par l'Etat, le mis en cause peut devoir régler un certain montant à l'avocat s'il ne bénéficie que de l'aide juridictionnelle particlle.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

103 millions

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

???

055 - What is the size of the population of your country?

à peu près 64,3 millions d'habitants

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

diplome d'avocat

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar -

c. other methods of quality control, please specify [...] - Yes. Contrôle par le batonnier et par les chefs de juridiction s'ils ont conclu un protocole de défense pénale

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁷⁸?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect - Yes.

b. mental capacity of the suspect - Yes.

c. physical handicaps of the suspect⁷⁹ -

d. deprivation of liberty of the suspect - Yes.

e. factual complexity of the case -

f. legal complexity of the case -

g. severity of the sanction that can be imposed - Yes.

h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

Si le mis en cause remplit les conditions de ressources pour bénéficier de l'aide juridictionnelle

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

Le mis en cause peut toujours choisir son avocat. Il ne lui en est commis un d'office que s'il ne précise aucun avocat

⁷⁸ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁷⁹ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

No.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

067 - Are there any standard fees for legal translation of documents?

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 407 du CPP : "Dans le cas où le prévenu, la partie civile ou le témoin ne parle pas suffisamment la langue française, ou s'il est nécessaire de traduire un document versé aux débats, le président désigne d'office un interprète, âgé de vingt et un ans au moins, et lui fait prêter serment d'apporter son concours à la justice en son honneur et en sa conscience."

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Article R.92 du CPP déjà cité. Barème modifié régulièrement.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer -
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. Interprète mis ç disposition des personnes mises en examen devant le juge d'instruction

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Article 102 alinéa3 (pour les témoins devant le juge d'instruction) : "Si le témoin est atteint de surdité, le juge d'instruction nomme d'office pour l'assister lors de son audition un interprète en langue des signes ou toute personne qualifiée maîtrisant un langage ou une méthode permettant de communiquer avec les sourds. Celui-ci, s'il n'est pas assermenté, prête serment d'apporter son concours à la justice en son honneur et en sa conscience. Il peut également être recouru à tout dispositif technique permettant de

communiquer avec le témoin. Si le témoin atteint de surdité sait lire et écrire, le juge d'instruction peut également communiquer avec lui par écrit.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁸⁰

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Les droits sont différents en fonction du stade de l'enquête : Devant les forces de police (article 63-1 du CPP : "Toute personne placée en garde à vue est immédiatement informée par un officier de police judiciaire, ou, sous le contrôle de celui-ci, par un agent de police judiciaire, de la nature de l'infraction sur laquelle porte l'enquête, des droits mentionnés aux articles 63-2, 63-3 et 63-4 ainsi que des dispositions relatives à la durée de la garde à vue prévues par l'article 63.") puis devant le juge d'instruction et enfin lors d'un renvoi devant la cour d'assises ou devant le tribunal correctionnel

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

No.

089 - When does the duty to inform the suspect of this right arise for the first time?

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

No.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

⁸⁰ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file -
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?
No.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

100 - When does the duty to inform the suspect of this right arise?

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Article 82-1 du CPP : "Les parties peuvent, au cours de l'information, saisir le juge d'instruction d'une demande écrite et motivée tendant à ce qu'il soit procédé à leur audition ou à leur interrogatoire, à l'audition d'un témoin, à une confrontation ou à un transport sur les lieux, à ce qu'il soit ordonné la production par l'une d'entre elles d'une pièce utile à l'information, ou à ce qu'il soit procédé à tous autres actes qui leur paraissent nécessaires à la manifestation de la vérité. A peine de nullité, cette demande doit être formée conformément aux dispositions du dixième alinéa de l'article 81 ; elle doit porter sur des actes déterminés et, lorsqu'elle concerne une audition, préciser l'identité de la personne dont l'audition est souhaitée.

Le juge d'instruction doit, s'il n'entend pas y faire droit, rendre une ordonnance motivée au plus tard dans le délai d'un mois à compter de la réception de la demande. Les dispositions du dernier alinéa de l'article 81 sont applicables.

A l'expiration d'un délai de quatre mois depuis sa dernière comparution, la personne mise en examen qui en fait la demande écrite doit être entendue par le juge d'instruction. Le juge d'instruction procède à son interrogatoire dans les trente jours de la réception de la demande, qui doit être formée conformément aux dispositions du dixième alinéa de l'article 81.

Devant la cour d'assises : Article 281 et 329 du CPP:

Article 281 du CPP : "Le ministère public et la partie civile signifient à l'accusé, l'accusé signifie au ministère public et, s'il y a lieu, à la partie civile, dès que possible et vingt-quatre heures au moins avant l'ouverture des débats, la liste des personnes qu'ils désirent faire entendre en qualité de témoins.

Les noms des experts appelés à rendre compte des travaux dont ils ont été chargés au cours de l'information doivent être signifiés dans les mêmes conditions.

L'exploit de signification doit mentionner les nom, prénoms, professions et résidence de ces témoins ou experts.

Les citations faites à la requête des parties sont à leurs frais, ainsi que les indemnités des témoins cités, s'ils en requièrent. Toutefois, le ministère public est tenu de citer à sa requête les témoins, dont la liste lui a été communiquée par les parties, cinq jours au moins avant l'ouverture des débats ; cette liste ne peut comporter plus de cinq noms.

Article 329 du CPP : "Les témoins appelés par le ministère public ou les parties sont entendus dans le débat, même s'ils n'ont pas déposé à l'instruction, ou s'ils n'ont pas été assignés, à condition que leurs noms aient été signifiés conformément aux prescriptions de l'article 281.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Partly.

Interpretation : oui

Traduction des documents écrits : Non (Les documents transmis par les Etats étrangers doivent être adressés en français)

111 - The right to information concerning fundamental procedural rights:

Partly.

111b (Check any that apply)

partly, please specify:

- | | |
|--|--------|
| a. information on the charge | - Yes. |
| b. information on access to the file | - |
| c. information on the right to remain silent | - |
| d. information on the right to call/examine witnesses and experts | - |

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Partly.

Application des règles générales d'octroi de l'aide juridictionnelle

114 - The right to interpretation and the right to translation of documents:

No.

115 - The right to information concerning fundamental procedural rights:

No.

115b (Check any that apply)

partly, please specify:

- | | |
|--|---|
| a. information on the charge | - |
| b. information on access to the file | - |
| c. information on the right to remain silent | - |
| d. information on the right to call/examine witnesses and experts | - |

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Partly.

Application des règles générales d'octroi de l'aide juridictionnelle

118 - The right to interpretation and the right to translation of documents:

No.

119 - The right to information concerning fundamental procedural rights:

No.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Partly.

Application des règles générales d'octroi de l'aide juridictionnelle

122 - The right to interpretation and the right to translation of documents:

No.

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

GERMANY

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁸¹

yes

Nach § 137 Abs. 1 StPO kann sich der Beschuldigte in jeder Lage des Verfahrens eines Verteidigers bedienen.

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

Siehe Antwort zu Frage 001/001a

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Nach § 136 Abs. 1, Satz 2 StPO ist der Beschuldigte bei seiner ersten (richterlichen) Vernehmung darauf hinzuweisen, dass es ihm nach dem Gesetz freisteht, auch schon vor seiner Vernehmung einen von ihm zu wählenden Verteidiger zu befragen. Die Vorschrift gilt auch für Vernehmungen von Polizei und Staatsanwaltschaft im Ermittlungsverfahren (vgl. § 163a Abs. 3 Satz 2 u. Abs. 4 Satz 2 StPO)

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

Siehe Antwort zu 003a.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Dies ergibt sich aus Art. 6 Abs. 3a) MRK und aus allgemeinen Verfahrensgrundsätzen wie dem Grundsatz auf ein faires Verfahren oder dem Grundsatz, dass rechtliches Gehör gewährt wird. Für das gerichtliche Verfahren ergibt sich dies aus § 185 Abs. 1 GVG.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

⁸¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Das Recht des Beschuldigten, einen Verteidiger zu wählen ergibt sich aus § 137 StPO.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

§ 148 Abs.1 StPO:

Dem Beschuldigten ist, auch wenn er sich nicht auf freiem Fuß befindet, schriftlicher und mündlicher Verkehr mit dem Verteidiger gestattet.

012 - Consultation (in person or by telephone) is possible before questioning by the police⁸²?

Yes.

Siehe Antwort zu Frage 11a.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁸³?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

⁸² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

⁸³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Dies ergibt sich aus der Formulierung "in jeder Lage des Verfahrens" in § 137 Abs. 1 Satz StPO:

"Der Beschuldigte kann sich in jeder Lage des Verfahrens des Beistandes eines Verteidigers bedienen".

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

§ 137 Abs. 1 StPO: Der Beschuldigte kann sich in jeder Lage des Verfahrens des Beistandes eines Verteidigers bedienen. Er ist darauf hinzuweisen, dass es ihm nach dem Gesetz freisteht, sich zu der Beschuldigung zu äußern oder nicht zur Sache auszusagen und jederzeit, auch schon vor seiner Vernehmung einen von ihm zu wählenden Verteidiger zu befragen, § 136 Abs. 1 Satz 2, § 163a Abs. 4 Satz 2 StPO.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

Siehe Antwort zu 024a.

026 (Check any that apply)

If so, how should the suspect be informed of this right?

a. Orally - Yes.

b. In writing -

c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Siehe Antwort zu Frage 006a.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Es besteht ein Verwertungsverbot, wenn der Beschuldigte nicht belehrt worden ist (Folge aus § 136 StPO).

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Die Aussage kann entweder auf Tonband aufgenommen und später verschriftet werden, oder durch eine Protokollantin oder eine Vernehmenseperson schriftlich niedergelegt werden.

030 - If so, how many copies of the audio recording are made?

Keine Angabe möglich.

031 - If so, who is entitled to receive a copy of the audio recording?

./.

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

No.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁸⁴?

037 - Is there a means test⁸⁵?

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms -
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

041 - When does the duty to inform the suspect of this right arise?

042 *(Check any that apply)*

How should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

⁸⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

⁸⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

044 *(Check any that apply)*

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

046 - When a request is denied, is there a legal remedy?

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...]

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...]

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

050 - If so, how is remuneration provided

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

052 - Is the suspect obliged to pay a financial contribution?

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

055 - What is the size of the population of your country?

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁸⁶?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect⁸⁷ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case - Yes.
- f. legal complexity of the case - Yes.
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. Nach § 140 abs. 1 StPO ist die Mitwirkung

eines Verteidigers notwendig, wenn die Hauptverhandlung im ersten Rechtszug vor dem Oberlandesgericht oder dem Landgericht stattfindet, dem Beschuldigten ein Verbrechen zur Last gelegt wird, das Verfahren zu einem Berufsverbot führen kann, der Beschuldigte sich mindestens drei Monate auf Grund richterlicher Anordnung oder mit richterlicher Genehmigung in einer Anstalt befunden hat und nicht mindestens zwei Wochen vor Beginn der Hauptverhandlung entlassen wird, zur Vorbereitung eines Gutachtens über den psychischen Zustand des Beschuldigten seine Unterbringung zur Beobachtung in Frage kommt, ein Sicherungsverfahren durchgeführt wird oder der bisherige Verteidiger durch eine Entscheidung von der Mitwirkung in dem Verfahren ausgeschlossen ist.

061 - Are the costs of obligatory defence covered by the state?

No.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

⁸⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

⁸⁷ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Dies ergibt sich aus § 187 Abs. 1 GVG: "Das Gericht zieht für den Beschuldigten oder Verurteilten, der der deutschen Sprache nicht mächtig, hör- oder sprachbehindert ist, einen Dolmetscher oder Übersetzer heran, soweit dies zur Ausübung seiner strafprozessualen Rechte erforderlich ist." Um diese strafprozessualen Rechte wahrnehmen zu können, müssen gegebenenfalls auch Dokumente übersetzt werden.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. Soweit weitere Dokumente für die Wahrnehmung prozessualer Rechte erforderlich sind, sind auch diese zu übersetzen (vgl. auch Antwort zu 063a).

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

§ 185 Abs. 1 Satz 1 GVG:

Wird unter Beteiligung von Personen verhandelt, die der deutschen Sprache nicht mächtig sind, so ist ein Dolmetscher zuzuziehen.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. Bei allen verfahrensbezogenen Gesprächen (z.B. Haftprüfung).

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Siehe Antwort zu Frage 063a

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁸⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

§ 201 Abs. 1 Satz 1 StPO:

Der Vorsitzende des Gerichts teilt dem Angeschuldigten die Anklageschrift mit.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

No.

089 - When does the duty to inform the suspect of this right arise for the first time?

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

No.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

⁸⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

§ 136 Abs. 1 Satz 2; 163a Abs. 4 Satz 2 StPO für das Ermittlungsverfahren: Der Beschuldigte ist darauf hinzuweisen, dass es ihm nach dem Gesetz freisteht, sich zu der Beschuldigung zu äußern oder nicht zur Sache auszusagen. Für die Hauptverhandlung gilt die gleichlautende Bestimmung in § 243 Abs. 4 Satz 1 StPO

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Siehe Antwort zu Frage 098a.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
§ 136 StPO

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Dies ergibt sich bereits aus Art. 6 Abs. 3 a) EMRK.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

§ 136 Abs. 1 Satz 3 StPO; § 163a Abs. 4 StPO (für das Ermittlungsverfahren):

Der Beschuldigte ist ferner darüber zu belehren, dass er zu seiner Entlastung einzelne Beweiserhebungen beantragen kann.

§ 244 StPO in der Hauptverhandlung:

Der Angeklagte hat das Recht, Beweisanträge zu stellen und somit auch beantragen, dass weitere Zeugen vernommen werden.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Bei Übersendung der Anklageschrift wird der Beschuldigte aufgefordert zu erklären, ob er die Vornahme einzelner Beweiserhebungen wünscht (§ 201 Abs. 1 StPO). Auch im Übrigen ist es ihm unbenommen, jederzeit Beweisanträge zu stellen.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Siehe Antwort zu Nr. 104a.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing - Yes.
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Dies ergibt sich aus Art. 6 Abs. 3 a) EMRK, § 187 GVG und für das Ermittlungsverfahren auch aus Nr. 181 der Richtlinien für das Straf- und Bußgeldverfahren: "Bei der ersten verantwortlichen Vernehmung eines Ausländers ist aktenkundig zu machen, ob der Beschuldigte die deutsche Sprache soweit beherrscht, dass ein Dolmetscher nicht hinzugezogen werden braucht. Ladungen, Haftbefehle, Strafbefehle, Anklageschriften und sonstige gerichtliche Sachentscheidungen sind dem Ausländer, der die deutsche Sprache nicht beherrscht, mit einer Übersetzung in eine ihm verständliche Sprache bekannt zu geben".

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Partly.

Dem Betroffenen, ist, sofern er noch keinen Beistand gewählt hat, ein Rechtsanwalt als Beistand zu bestellen, wenn:

1. Wegen der Schwierigkeit der Sach- oder Rechtslage die Mitwirkung eines Beistands geboten erscheint, insbesondere bei Zweifeln, ob die Voraussetzungen für die Zulässigkeit der Überstellung vorliegen,

2. ersichtlich ist, dass der Betroffene seine Rechte nicht selbst hinreichend wahrnehmen kann, oder

3. der Betroffene noch nicht achtzehn Jahre alt ist (§ 40 Abs. 2 IRG)

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

No.

113 - The right to legal assistance (partially) free of charge:

No.

114 - The right to interpretation and the right to translation of documents:

No.

115 - The right to information concerning fundamental procedural rights:

No.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Partly.

Im Falle einer Beschlagnahme zum Zwecke der Vorbereitung einer Einziehungsentscheidung haben der Beschuldigte sowie ggf. betroffene Dritte Anspruch auf einen Pflichtbeistand, wenn 1. wegen der Schwierigkeiten der Sach- oder Rechtslage die Mitwirkung eines Beistands geboten erscheint, 2. ersichtlich ist, dass der Beschuldigte seine Rechte nicht selbst hinreichend wahrnehmen kann, oder 3. der Beschuldigte sich im Ausland in Haft befindet und Zweifel bestehen, ob er seine Rechte selbst hinreichend wahrnehmen kann.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

No.

121 - The right to legal assistance (partially) free of charge:

No.

122 - The right to interpretation and the right to translation of documents:

No.

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

a. information on the charge

-

b. information on access to the file

-

c. information on the right to remain silent

-

d. information on the right to call/examine witnesses and experts

-

GREECE

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁸⁹

yes

articles 96, 100 of the Greek Code of Criminal Proceeding [CCP]

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

article 103 of CCP

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

articles 100, 103 of CCP

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

Yes.

008 - If so, please specify on which grounds:

Though not expressly provided for in the law, limitation of contact with a lawyer may occur in practice, in order to better obtain and safeguard gathering of evidence

009 - If so, please specify for which period of time?

Up to [...] hours after arrest

less than 24 hours after arrest

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

articles 96, 340 of CCP

⁸⁹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?
More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Although not provided for in the law, consultation of the suspect with his/her lawyer is not to be monitored by the authorities

012 - Consultation (in person or by telephone) is possible before questioning by the police⁹⁰?

No.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁹¹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

⁹⁰ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

⁹¹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

article 97 of CCP

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions -
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

articles 100, 103 of Greek Code of Criminal Proceeding [CCP]

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Indirectly from combined Articles 100, 103 of Greek Code of Criminal Proceeding [CCP]

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

The court is, according to article 177 of Greek Code of Criminal Proceeding [CCP] free to evaluate all kinds of lawfully gathered pieces of evidence (and so is considered a confession made in the absence of the suspect's lawyer), not being bound by any specific legal rules

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Article 6 of Law No 3226/2004

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test⁹²?

Yes.

professional legal aid needed due to the mental condition of the suspect and the gravity of the penalty to be imposed in case the latter is found guilty of the specific offence

037 - Is there a means test⁹³?

Yes.

Free legal aid to be ensured in case that the financial disability of the suspect so urges in certain severe and complex cases

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms - Yes.
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...]

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

Trial before the Court of Appeal and the Court of Cassation, where the need for professional legal aid is established on the complex legal character of the proceedings

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

⁹² A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

⁹³ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Before the examining judge (in view of the trial)

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

No.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] - Yes. Lawyers in particular appointed by the Barristers' Associations on a regular, prescribed by the Law No 3226/2004 basis

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...]-

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

No specific data available

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Minimum amounts prescribed depending upon the sort of the case (but not specific data available)

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

No relevant data available

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

No relevant data available

055 - What is the size of the population of your country?

11,000,000

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence⁹⁴?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.

⁹⁴ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect⁹⁵ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case - Yes.
- f. legal complexity of the case - Yes.
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

No specific data available

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

⁹⁵ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Indirectly from combined articles 100 and 103 of the Greek Code of Criminal Proceeding [CCP]

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment -
- f. parts of the case file - Yes.
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

When the case is brought before the examining judge

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

Article 103 of the Greek Code of Criminal Proceeding

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Articles 102, 103, 233 of the Greek Code of Criminal Proceeding [CCP]

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Fees are estimated on a day-basis, depended on the number of days during which the interpreter was involved with the specific case

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

No.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Indirectly from combined articles 101 and 103 of the Greek Code of Criminal Proceeding [CCP]

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 *(Check any that apply)*

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

Indirectly from combined articles 101 and 103 of the Greek Code of Criminal Proceeding [CCP]

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge⁹⁶

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Indirectly from combined articles 103 and 271 of the Greek Code of Criminal Proceeding [CCP]

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

089 - When does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 101 of the Greek Code of Criminal Proceeding [CCP]

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Article 103 of the Greek Code of Criminal Proceeding [CCP]

094 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

095 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

⁹⁶ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Article 103 of the Greek Code of Criminal Proceeding [CCP]

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

The specific right is not expressly prescribed in the law

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

100 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Indirectly from article 103 of the Greek Code of Criminal Proceeding [CCP]

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Article 327 of the Greek Code of Criminal Proceeding [CCP]

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

HUNGARY

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?⁹⁷

yes

According to Section 43 (3) a) of the Act XIX of 1998 on Criminal Proceedings (hereinafter referred to as CPA) the defendant in custody is entitled to contact his defence counsel and communicate with him/her both in writing and verbally without control.

According to Section 184 (2) of the CPA if the suspect is questioned by the prosecutor or the investigating authority, the defence counsel may be present at the questioning. The counsel for the defence may attend the questioning of a witness if this was motioned by himself or the suspect he defends, as well as the confrontation held with the participation of such a witness. The counsel for the defence attending the questioning may ask questions from the suspect and the witness.

According to Section 184 (3) of the CPA a detained suspect may consult his defence counsel prior to his questioning.

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

According to Section 47 and 48 of the CPA a counsel for the defence may primarily be retained by the defendant. The retained counsel for the defence may exercise his procedural rights after submitting the power of attorney. If defence is statutory and the defendant has not retained a counsel for the defence, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence. If the defendant is detained, the counsel for the defence shall be appointed not later than the first questioning of the defendant.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

According to the Section 43 (2) f) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the whole criminal proceedings.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement

⁹⁷ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

According to Section 47 and 48 of the CPA a counsel for the defence may primarily be retained by the defendant. A power of attorney may also be conferred by the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country. If defence is statutory and the defendant has not retained a counsel for the defence, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence. The court, the prosecutor or the investigating authority shall also appoint a counsel for the defence if defence is not statutory, but the defendant requests the appointment of a counsel on the ground of inability to make arrangements for his defence due to his financial standing. If deemed necessary in the interest of the defendant, at the request of the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country, or ex officio, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

According to Section 43 (3) a) of the CPA the defendant in custody is entitled to contact his defence counsel, and communicate with him/her both in writing and verbally without control.

012 - Consultation (in person or by telephone) is possible before questioning by the police⁹⁸?

Yes.

According to the CPA the defendant in custody is entitled to contact his defence counsel, and communicate with him/her both in writing and verbally without control. A detained suspect may consult his defence counsel prior to his questioning. If defence is statutory and the defendant has not retained a counsel for the defence, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence. If the defendant is detained, the counsel for the defence shall be appointed not later than the first questioning of the defendant. The counsel for the defence shall establish contact with the defendant without delay.

⁹⁸ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison⁹⁹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

⁹⁹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

According to Section 184 (2) of the CPA if the suspect is questioned by the prosecutor or the investigating authority, the defence counsel may be present at the questioning.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** - Yes. Until the conclusion of the investigation the counsel for the defence may receive a copy of the expert opinion and of documents produced on investigation procedures where their presence is authorized by the CPA; or of other documents, provided that this does not interfere with the interest of the investigation. The counsel for the defence shall be entitled to receive a copy of the minutes taken on the questioning of the defendant.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

According to Section 43 (2) f) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally** - Yes.
- b. In writing** - Yes.
- c. By a letter of rights** -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement

promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

If the suspect is questioned by the prosecutor or the investigating authority, the defence counsel may be present at the questioning. If the counsel for the defence fails to attend in spite of having received a subpoena, and fails to provide well-grounded justification thereof either in advance — upon gaining cognisance of the obstacle — or, if this is no longer possible, immediately after the obstacle has ceased to exist, or leaves the procedural action without permission (if the subpoena complies with the provisions set forth in the CPA, and the service of the subpoena has met the requirements stipulated in the CPA and in the specific law, as well as other regulations) the suspect may be questioned.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

According to Section 167 (1) of the CPA the prosecutor and the investigating authority may order the recording of the investigatory action by short-hand, a video or audio recorder or other equipment; and shall order the same at the motion of the suspect, the counsel for the defence or the victim filed simultaneously with an advance payment of the costs.

030 - If so, how many copies of the audio recording are made?

One.

031 - If so, who is entitled to receive a copy of the audio recording?

The persons participating in the criminal proceeding are entitled to hear the record and those who have the right to inspect the documents (i.e. the defendant and his/her counsel, the victim if the document affects him/her, the witness if he/she was presented in the investigatory action) may apply for a copy from the audio recording.

032 - Is the questioning of the suspect video recorded?

Sometimes.

According to Section 167 (1) of the CPA the prosecutor and the investigating authority may order the recording of the investigatory action by short-hand, a video or audio recorder or other equipment; and shall order the same at the motion of the suspect, the counsel for the defence or the victim filed simultaneously with an advance payment of the costs.

033 - If so, how many copies of the video recording are made?

One.

034 - If so, who is entitled to receive a copy of the video recording?

The persons participating in the criminal proceeding are entitled to hear the record and those who have the right to inspect the documents (i.e. the defendant and his/her counsel, the victim if the document affects him/her, the witness if he/she was presented in the investigatory action) may apply for a copy from the audio recording.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

See answers 036 and 037.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁰⁰?

Yes.

According to Section 46 of the CPA the participation of a counsel for the defence is statutory in criminal proceedings if

- a) the law orders a five-year or more severe imprisonment for the criminal offence,
- b) the defendant is detained,
- c) the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled,
- d) the defendant does not speak the Hungarian language or the language of the procedure,
- e) the defendant is unable to defend himself personally for any other reasons,
- f) if expressly stipulated so in the CPA.

A counsel for the defence may primarily be retained by the defendant. A power of attorney may also be conferred by the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country. The court, the prosecutor or the investigating authority shall appoint a counsel for the defence if defence is statutory and the defendant has not retained a counsel for the defence. If deemed necessary in the interest of the defendant, at the request of the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country, or ex officio, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence.

The court, the prosecutor or the investigating authority shall also appoint a counsel for the defence if defence is not statutory, but the defendant requests the appointment of a counsel on the ground of inability to make arrangements for his defence due to his financial standing. If, based on his income and property, the defendant is presumably unable to cover the cost of criminal proceedings and has certified the above in compliance with the provisions of the relevant legal regulation, the court or the prosecutor may decide on a personal exemption from paying the costs at the request of the defendant or the counsel for the defence. In the event of permitting personal exemption the court, the prosecutor or the investigating authority will appoint a counsel for the defence upon the request of the defendant, the fee and cost of the officially appointed counsel for the defence is paid by the state.

037 - Is there a means test¹⁰¹?

Yes.

¹⁰⁰ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁰¹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

According to Section 74 (3) of the CPA if, based on his income and property, the defendant is presumably unable to cover the cost of criminal proceedings and has certified the above in compliance with the provisions of the relevant legal regulation, the court or the prosecutor may decide on a personal exemption from paying the costs at the request of the defendant or the counsel for the defence. In the event of permitting personal exemption the court, the prosecutor or the investigating authority will appoint a counsel for the defence upon the request of the defendant, the fee and cost of the officially appointed counsel for the defence is paid by the state.

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms - Yes.

b. any rules on what documentation should be provided, please specify rules [...] Yes. The suspect have to declare his/her income and salary, the conditions of his property and other personal circumstances (how many persons are supported by him/her, the number of the persons living with the suspect and the income/salary of this persons).

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

According to Section 43 (2) f) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 *(Check any that apply)*

How should the suspect be informed of this right?

a. Orally - Yes.

b. In writing - Yes.

c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor - Yes.
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

Yes.

Unless an exception is made in the CPA, legal remedy shall apply against the decisions of the court, the prosecutor and the investigating authority, the measures of the prosecutor and the investigating authority or – if the CPAt permits so – for the lack of any measures by the prosecutor and the investigating authority. The appeal against a decision on the personal exemption from the payment of costs shall have a delaying effect.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...]

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor - Yes.
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...]- Yes. If the counsel for the defence fails to attend in spite of having received a subpoena, and the defendant agrees, the judge is entitled to appoint a counsel being on duty. The system of the duty is determined by the bar association.

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

No.

050 - If so, how is remuneration provided

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

052 - Is the suspect obliged to pay a financial contribution?

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

There are no datas available.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

There are no datas available.

055 - What is the size of the population of your country?

10 045 401 people (in 2008).

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar -

c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁰²?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect - Yes.

b. mental capacity of the suspect - Yes.

c. physical handicaps of the suspect¹⁰³ - Yes.

d. deprivation of liberty of the suspect - Yes.

e. factual complexity of the case -

f. legal complexity of the case -

g. severity of the sanction that can be imposed - Yes.

h. other circumstances, please specify [...] - Yes. - if the defendant does not speak the

Hungarian language or the language of the procedure,

- if the defendant is unable to defend himself personally for any other reasons,

- if the investigating judge holds the session by way of a closed-circuit communication system,

- in the court procedure of third instance,

¹⁰² Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁰³ Blindness, deafness et cetera.

- in the review procedure,
- in military criminal proceedings the presence of the counsel for the defence is statutory at the trial if the criminal offence is punishable by five years' or more imprisonment by law, in the cases of obligatory defence, if there is a substitute private accuser,
- in arraignment at the trial,
- in procedure against an absent defendant at the trial,
- upon a waiver of trial,
- in case of the deposit of a security,
- in case of request for legal remedy on legal grounds (the Prosecutor General may report a legal remedy on legal grounds at the Supreme Court against the unlawful and final decision of the court, unless the final decision may be contested by other means of legal remedy).

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

The court, the prosecutor or the investigating authority shall appoint a counsel for the defence if defence is statutory and the defendant has not retained a counsel for the defence. The out-of-pocket expenses and fees of the officially appointed counsel for the defence are advanced by the state. If the accused is declared guilty or the liability of the accused is established in committing an administrative offence, the court shall order the accused to pay this cost (as the part of the cost of the criminal proceedings). But in case of personal exemption from the payment of costs the fee and cost of the officially appointed counsel for the defence is paid by the state.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Translation of the decisions and other official documents to be served pursuant to the CPA shall be the responsibility of the court, prosecutor or investigating authority which has adopted the decision or issued the official document. If the accused fails to command the Hungarian language, the part of the indictment pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, and thus filed with the court. If the accused does not command the Hungarian language, after the announcement, the part of the verdict and conclusive ruling pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, then served on the accused.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. The court, prosecutor or investigating authority adopted the decision or the official document is responsible for translating the decision and other official documents to be served pursuant to the CPA. Unless provided otherwise by any Act, the document to be served shall not be translated if the party concerned specifically surrenders this right.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

071 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

According to the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken. If a person whose native language is not Hungarian intends to use their native language, or – pursuant to and within the scope of an international agreement promulgated by law – their regional or minority language in the course of the proceedings, an interpreter shall be employed. If the use of the native language involves unreasonable difficulties, the use of another language defined by the person not commanding the Hungarian language as a language spoken shall be provided for by way of an interpreter.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

At every police station, there is a list of the available interpreters.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

At every court, there is a list of the available interpreters.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer** -
- b. the questioning of the suspect by the police** - Yes.
- c. the trial** - Yes.
- d. other procedural occasions/activities/hearings, please specify [...]** - Yes. If the suspect asks for an interpreter, he/she will be presented at all procedural actions (e.g. during the inspection of the documents of the investigation).

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

According to the CPA the participation of a counsel for the defence is statutory in criminal proceedings if the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled.

As a rule, deaf or dumb persons shall be questioned either by way of a sign interpreter or by way of written communication.

The keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously therewith. If the accused is deaf and an interpreter cannot be employed, minutes shall always be taken simultaneously with the procedure.

After the closing arguments, addresses and rebuttals at the trial, if the accused is deaf and no interpreter may be employed, the accused shall be granted the opportunity to read the minutes.

The state shall bear the cost incurred because the accused is deaf, numb or blind.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

According to the CPA the participation of a counsel for the defence is statutory in criminal proceedings if the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled.

As a rule, deaf or dumb persons shall be questioned either by way of a sign interpreter or by way of written communication.

The keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously therewith. If the accused is deaf and an interpreter cannot be employed, minutes shall always be taken simultaneously with the procedure.

After the closing arguments, addresses and rebuttals at the trial, if the accused is deaf and no interpreter may be employed, the accused shall be granted the opportunity to read the minutes.

The state shall bear the cost incurred because the accused is deaf, numb or blind.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

According to Section 43 (2) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁰⁴

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

According to the CPA the defendant is entitled to receive information on the suspicion, on the charge and any changes therein. If, based on available data, reasonable ground exists to suspect that a specific person has committed a criminal offence, the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) shall interrogate the suspect. Detained suspects shall be interrogated within twentyfour hours. The deadline shall be computed from the time when the suspect was brought before the investigating authority.

At the beginning of the questioning, the suspect shall be informed of the gist of the suspicion, as well as of the applicable legal regulations.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

According to Section 43 (2) of the CPA the defendant is entitled to receive information on the suspicion, on the charge and any changes therein, and receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

According to Section 179 (1) of the CPA if, based on available data, reasonable ground exists to suspect that a specific person has committed a criminal offence, the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) shall interrogate the suspect. Detained suspects shall be interrogated within twentyfour hours. The deadline shall be computed from the time when the suspect was brought before the investigating authority. At the beginning of the questioning, the suspect shall be informed of the gist of the suspicion, as well as of the applicable legal regulations.

According to the Section 263 (2) of the CPA the indictment shall be sent to the accused and the defence counsel by the presiding judge and he/she requests both the accused and the defence counsel to state their means of evidence within fifteen days.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement

¹⁰⁴ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

According to Section 43 (2) b) of the CPA the defendant is entitled to inspect the documents affecting him in the course of the process.

According to Section 193 (1) of the CPA after the conclusion of the investigation, the prosecutor or (unless the prosecutor provides for otherwise) the investigating authority shall hand the laced documents of the investigation over to the suspect and the counsel for the defence in a room designated for this purpose. The suspect and the counsel for the defence shall be enabled to inspect all documents – with the exception of those treated confidentially – that may serve as the basis for pressing charges.

The deadline for the inspection of the documents shall be notified to the suspect and the counsel for the defence; the detained suspect – at his own request – shall be brought to the designated room by the closing date. The suspect and the counsel for the defence may motion for the supplementation of the investigation, make other motions and observations and request copies of the documents. The suspect shall be advised of this right.

According to Section 216 (4) of the CPA if the prosecutor files an indictment, he shall ensure that prior to this, the suspect and the counsel for the defence may examine the documents made on the investigatory action. In other cases the possibility for the examination of the documents shall be granted at the motion of the suspect or the counsel for the defence.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

According to Section 43 (2) f) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

According to Section 193 (2) of the CPA the deadline for the inspection of the documents shall be notified to the suspect and the counsel for the defence; the detained suspect – at his own request – shall be brought to the designated room by the closing date. The suspect and the counsel for the defence may motion for the supplementation of the investigation, make other motions and observations and request copies of the documents. The suspect shall be advised of this right.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

According to Section 193 (1) of the CPA after the conclusion of the investigation, the prosecutor or (unless the prosecutor provides for otherwise) the investigating authority shall hand the laced documents of the investigation over to the suspect and the counsel for the defence in a room designated for this purpose. The suspect and the counsel for the defence shall be enabled to inspect all documents – with the exception of those treated confidentially – that may serve as the basis for pressing charges.

The deadline for the inspection of the documents shall be notified to the suspect and the counsel for the defence; the detained suspect – at his own request – shall be brought to the designated room by the closing date. The suspect and the counsel for the defence may motion for the supplementation of the investigation, make other motions and observations and request copies of the documents. The suspect shall be advised of this right.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing - Yes.
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file -
- f. other documents, please specify [...] - Yes. The court, prosecutor or investigating authority adopted the decision or the official document is responsible for translating the decision and other official documents to be served pursuant to the CPA. Unless provided otherwise by any Act, the document to be served shall not be translated if the party concerned specifically surrenders this right.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

According to Section 8 of the CPA no one may be compelled to make a self-incriminating testimony or to produce self-incriminating evidence.

According to 117 (2) of the CPA at the commencement of the questioning, the defendant shall be advised that he is not under the obligation to testify, that he may refuse to testify or to respond to any of the questions at any time in the course of the questioning, but may freely decide to testify at any time even if he has previously refused to do so. The defendant shall also be warned that anything he says or provides may be used as evidence. The warnings and the response thereto of the defendant shall be included in the records word for word. In the absence of such warnings and the recording of the answer thereto word for word, the testimony of the defendant may not be admitted as a means of evidence.

The questioning of the accused shall be governed by the provisions set forth in Sections 117, with the exception that the presiding judge shall also advise the accused that he may ask questions from those questioned in the course of the evidentiary procedure, and may also make motions and observations. The accused shall also be warned that failure of testimony shall be subject to reading out his earlier testimony made as a defendant.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

According to Section 43 (2) f) of the CPA the defendant is entitled to receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

At the commencement of the questioning, the defendant shall be advised that he is not under the obligation to testify, that he may refuse to testify or to respond to any of the questions at any time in the course of the questioning, but may freely decide to testify at any time even if he has previously refused to do so, see Section 117 (2) of the CPA.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
At the commencement of the questioning.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

According to Section 43 (2) d) of the CPA the defendant is entitled to present facts to his defence at any stage of the procedure, and to make motions and objections.

According to Section 124 (1) of the CPA if the testimonies given by the defendant(s) and the witness(es) are contradictory, if necessary, the conflict may be resolved by way of confrontation. Those confronted shall present their testimony to one another in spoken word and may be permitted to ask questions from one another.

According to Section 285 of the CPA in the course of the evidentiary procedure the prosecutor, the accused, the counsel for the defence, the victim, the private party, and in the issues of his concern, the other interested party may make motions and observations.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

According to Section 43 (2) of the CPA the defendant is entitled to present facts to his defence at any stage of the procedure, and to make motions and objections, and receive information from the court, the prosecutor and the investigating authority concerning his rights and obligations during the criminal proceedings.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
At the commencement of the procedural action.

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

According to Section 9 (2) of the CPA in criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

IRELAND

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁰⁵

yes

Regulation 9 of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Stations) Regulations, 1987 and 2006. (referred to hereafter as “the Custody Regulations”).

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

Once the person is detained in a police station. The Custody Regulations specify that the member in charge of the police station shall, without delay, inform an arrested person or cause him to be informed of the right to consult a solicitor.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Regulation 8 of the Custody Regulations.

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

Regulation 8 of the Custody Regulations requires that the member in charge at the police station shall without delay inform an arrested person or cause him to be informed.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

In writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

, the Constitution of Ireland, hereafter referred to as " the Constitution", guarantees natural justice and fair procedure as does Article 6 of the ECHR. The Convention has been incorporated into domestic law by the European Convention on Human Rights Act 2003.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

¹⁰⁵ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Regulation 8 of the Custody Regulations provides for the right to consult a solicitor. An application can be made to the Courts to have free legal assistance granted.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Constitutional right. Also Article 6 of ECHR. Regulation 11(3) of the Custody Regulations applies.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁰⁶?

Yes.

Constitutional right. Also, Article 6 of ECHR. With regards to inferences drawn from failure or refusal to account for objects, marks, etc., Part 4 of the Criminal Justice Act, 2007, provides that such inferences shall not have effect unless the accused was afforded a reasonable opportunity to consult a solicitor before such failure or refusal occurs.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

Yes.

Arrangements for visits by lawyers are set out in Regulation 11 of the Custody Regulations.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

Yes.

Each case is dealt with on its merits by the member-in-charge of the police station.

016 - Can the lawyer visit his client detained in prison¹⁰⁷?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

¹⁰⁶ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹⁰⁷ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

No.

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police -
- b. questioning by the prosecutor -
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions -
- c. make remarks -
- d. consult with his client in private -
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally** -
- b. In writing** -
- c. By a letter of rights** -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

The evidential value of any confession is a matter for the trial judge.

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

Yes, all questionings are video recorded

033 - If so, how many copies of the video recording are made?

Three

034 - If so, who is entitled to receive a copy of the video recording?

Suspect only entitled to receive a copy if charged and by order of the Court in accordance with Section 56 of the Criminal Justice Act 2007. Original retained by Police Superintendent.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

The Criminal Justice (Legal Aid) Act 1962 provides for the granting of free legal aid to poor persons in certain criminal cases. The Supreme Court, in the case of *State (Healy) v. Donoghue* [1976] I.R. 325, found that the 1962 Act imposes a constitutional duty on the State to provide legal aid to persons accused of a serious crime who are unable to fund their own defence.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁰⁸?

Yes.

Where the charge is one of murder or where an appeal is one from the Court of Criminal Appeal to the Supreme Court, legal aid will be granted once the court is satisfied that the applicant is a person of insufficient means. In other cases the court must be satisfied not only that the accused is a person of insufficient means but that by reason of the “gravity of the charge” or “exceptional circumstances” it is essential in the interests of justice that the applicant should have legal aid in the preparation and conduct of his/her defence or appeal, as the case may be.

037 - Is there a means test¹⁰⁹?

Yes.

An applicant for legal aid must establish to the satisfaction of the court that his/her means are insufficient to enable him/her pay for legal aid him/herself. This is a discretionary matter for each court and is not currently governed by any financial eligibility guidelines. However, under Section 9 of the Criminal Justice (Legal Aid) Act 1962 the court may require a person to complete a statement of means.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms

-

b. any rules on what documentation should be provided, please specify rules [...]

c. other rules, please specify [...]

- Yes. There are no rules or guidelines currently laid

down. Regulation 9 (2) of the Criminal Justice (Legal Aid) Regulations 1965 provides that where a person is required, pursuant to Section 9 of the Act, to furnish a statement relevant for determining whether his means are insufficient to enable him obtain legal aid, the statement shall be in the form set out in the Schedule to the Regulations.

¹⁰⁸ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁰⁹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

There is no requirement set out in the 1962 Act that the person being charged or being returned for trial should be informed of the existence of the Criminal Legal Aid Scheme. However, the Supreme Court ruling in the case of State (Healy) v Donoghue [1976] I.R. 325 makes it clear that the accused has a constitutional entitlement to be informed by the court in which s/he is appearing of his/her possible right to legal aid and the case also made it clear that if legal aid is granted, the case cannot proceed unless the accused is actually represented.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

See response to Q.40 above.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

It is a fundamental right that a person understands the language of the proceedings. If legal aid is granted the solicitor assigned may engage the services of an interpreter or translator and be reimbursed under the Criminal Legal Aid Scheme.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

No.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Regulation 7 of the Criminal Justice (Legal Aid) Regulations 1965 provides that upon the grant of a certificate of free legal aid, the court "having taking into consideration the representations (if any) of the person to whom the certificate is granted, assign to him a solicitor from the appropriate list ...". The list referred to is the list of solicitors who, in accordance with the Regulations, have notified the appropriate body of their willingness to act for persons to whom certificates of free legal aid are granted.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Solicitors are paid on a fixed and published scale of fees in respect of cases heard in the District Court (summary offences). They are paid an initial brief fee for the first appearance in court and a refresher fee for each subsequent day in court. For indictable offences in the Circuit and higher courts counsel is assigned in addition to a solicitor. In some cases two counsel – one senior and one junior may be assigned.

The fees paid to counsel in the Circuit and higher Courts in respect of indictable offences are determined entirely by the fees which the Director of Public Prosecutions (DPP) pays to the prosecution counsel, through parity agreements introduced by Regulations made under the Criminal Justice (Legal Aid) Act, 1962, in 1976 and 1978. The fees paid to solicitors in respect of their services in the Circuit and higher Courts are related to the fees payable to the defence counsel which are in turn based on the fees paid to the prosecution counsel as determined by the DPP.

The Regulations also provide for the payment to solicitors for expenses (including reasonable disbursements) and for the payment of certain expenses of defence witnesses.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

See response to Q.50 above.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

Expenditure on criminal legal aid in 2008 amounted to €55.30m.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Total budget for criminal justice sector, excluding the prosecuting authorities, was €2.6bn in 2008 = 2.1%

055 - What is the size of the population of your country?

4.2m (2006 Census of Population)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...]-

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹¹⁰?

No.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect¹¹¹ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...]-

¹¹⁰ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹¹¹ Blindness, deafness et cetera.

061 - Are the costs of obligatory defence covered by the state?

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Constitutional right. Also Article 6 of ECHR

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

On arrival at the police station.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing - Yes.
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

No.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Constitutional right and Article 6 ECHR

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Linguistic assistance is provided for where necessary as a matter of constitutional justice and fair procedure

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

There are no standing arrangements. In the case of a suspect so impaired the Garad (Police) will make appropriate arrangements to meet the particular needs of the individual.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

There are no standing arrangements. In the case of a suspect so impaired the Garad (Police) will make appropriate arrangements to meet the particular needs of the individual.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Constitutional right. Also, Article 6 of ECHR

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

On arrival at the Police station.

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

Constitutional right. Also, Article 6 of ECHR.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹¹²

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Constitutional right. Also, Article 6 of ECHR

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Regulation 8(1) of the Custody Regulations requires that the member in charge of the police station shall without delay inform an arrested person or cause him to be informed in ordinary language of the offence or other matter in respect of which he has been arrested.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

As soon as possible.

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Constitutional right. Also, Article 6 of ECHR

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Constitutional right. Also, Article 6 of ECHR

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Incorporated into the right to a solicitor/legal advisor.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The duties of disclosure is set-out in "Guidelines for Prosecutors" prepared by the Director of Public Prosecutions which is available at

¹¹² The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

http://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_%28Revised_Oct07%29_EN_GLISH1.pdf

095 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

No.

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention -
- d. the final judgment (sentence) -
- e. parts of the case file -
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Set out in the "Judges Rules" which is a guide for the Gardaí(Police) when investigating a crime, to ensure that suspects are treated fairly. The Judges' Rules do not have the force of law, however, any statement taken from a suspect, in breach of the rules, may be rejected by a judge conducting a criminal trial.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Set out in the "Judges Rules" which is a guide for the Gardaí(Police) when investigating a crime, to ensure that suspects are treated fairly. The Judges' Rules do not have the force of law, however, any statement taken from a suspect, in breach of the rules, may be rejected by a judge conducting a criminal trial.

100 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Constitutional right. Also, Article 6 of ECHR

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Constitutional right. Also, Article 6 of ECHR

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Yes, incorporated into the accused's right to legal advice.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Prior to commencement of the trial.

106 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

No.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

No.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

No.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

No.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

ITALY

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹¹³

yes

Art. 104 c.p.p.

(Colloqui del difensore con l'imputato in custodia cautelare)

1. L'imputato in stato di custodia cautelare ha diritto di conferire con il difensore fin dall'inizio dell'esecuzione della misura.
2. La persona arrestata in flagranza o fermata a norma dell'articolo 384 ha diritto di conferire con il difensore subito dopo l'arresto o il fermo.
3. Nel corso delle indagini preliminari, quando sussistono specifiche ed eccezionali ragioni di cautela, il giudice su richiesta del pubblico ministero può, con decreto motivato, dilazionare, per un tempo non superiore a cinque giorni, l'esercizio del diritto di conferire con il difensore.
4. Nell'ipotesi di arresto o di fermo, il potere previsto dal comma 3 è esercitato dal pubblico ministero fino al momento in cui l'arrestato o il fermato è posto a disposizione del giudice.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Art. 386 c.p.p.

(Doveri della polizia giudiziaria in caso di arresto o di fermo)

1. Gli ufficiali e gli agenti di polizia giudiziaria che hanno eseguito l'arresto o il fermo o hanno avuto in consegna l'arrestato, ne danno immediata notizia al pubblico ministero del luogo dove l'arresto o il fermo è stato eseguito. Avvertono inoltre l'arrestato o il fermato della facoltà di nominare un difensore di fiducia.
2. Dell'avvenuto arresto o fermo gli ufficiali e gli agenti di polizia giudiziaria informano immediatamente il difensore di fiducia eventualmente nominato ovvero quello di ufficio designato dal pubblico ministero a norma dell'articolo 97.
3. Qualora non ricorra l'ipotesi prevista dall'articolo 389 comma 2, gli ufficiali e gli agenti di polizia giudiziaria pongono l'arrestato o il fermato a disposizione del pubblico ministero al più presto e comunque non oltre ventiquattro ore dall'arresto o dal fermo. Entro il medesimo termine trasmettono il relativo verbale, salvo che il pubblico ministero autorizzi una dilazione maggiore. Il verbale contiene l'eventuale nomina del difensore di fiducia, l'indicazione del giorno, dell'ora e del luogo in cui l'arresto o il fermo è stato eseguito e l'enunciazione delle ragioni che lo hanno determinato.
4. Gli ufficiali e gli agenti di polizia giudiziaria pongono l'arrestato o il fermato a disposizione del pubblico ministero mediante la conduzione nella casa circondariale o mandamentale del luogo dove l'arresto o il fermo è stato eseguito.

¹¹³ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

5. Il pubblico ministero può disporre che l'arrestato o il fermato sia custodito, in uno dei luoghi indicati nel comma 1 dell'articolo 284 ovvero, se ne possa derivare grave pregiudizio per le indagini, presso altra casa circondariale o mandamentale.

6. Gli ufficiali e gli agenti di polizia giudiziaria trasmettono il verbale di fermo anche al pubblico ministero che lo ha disposto, se diverso da quello indicato nel comma 1.

7. L'arresto o il fermo diviene inefficace se non sono osservati i termini previsti dal comma 3.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Art. 143 c.p.p.

Nomina dell'interprete.

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.

2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.

3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.

4. La prestazione dell'ufficio di interprete è obbligatoria.

Art. 61 c.p.p.

(Estensione dei diritti e delle garanzie dell'imputato)

1. I diritti e le garanzie dell'imputato si estendono alla persona sottoposta alle indagini preliminari.

2. Alla stessa persona si estende ogni altra disposizione relativa all'imputato, salvo che sia diversamente stabilito.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Art. 386 c.p.p.

(Doveri della polizia giudiziaria in caso di arresto o di fermo)

1. Gli ufficiali e gli agenti di polizia giudiziaria che hanno eseguito l'arresto o il fermo o hanno avuto in consegna l'arrestato, ne danno immediata notizia al pubblico ministero del luogo dove l'arresto o il fermo è stato eseguito. Avvertono inoltre l'arrestato o il fermato della facoltà di nominare un difensore di fiducia.
2. Dell'avvenuto arresto o fermo gli ufficiali e gli agenti di polizia giudiziaria informano immediatamente il difensore di fiducia eventualmente nominato ovvero quello di ufficio designato dal pubblico ministero a norma dell'articolo 97.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Art. 35 D.P.R. 29 aprile 1976, n. 431

Comma 10. Appositi locali sono destinati ai colloqui dei detenuti con i loro difensori.

Art. 35 c.p.p.

Comma 5. Ai fini di quanto previsto dall'articolo 103, comma 5, del codice quando sono autorizzati colloqui telefonici tra l'imputato detenuto e il suo difensore, come risultante dall'indicazione del relativo procedimento, non si applica la disposizione dell'articolo 37, comma 8 del d.p.r. 29 aprile 1976, n. 431.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹¹⁴?

Yes.

Art. 104 c.p.p.

(Colloqui del difensore con l'imputato in custodia cautelare)

1. L'imputato in stato di custodia cautelare ha diritto di conferire con il difensore fin dall'inizio dell'esecuzione della misura.
2. La persona arrestata in flagranza o fermata a norma dell'articolo 384 ha diritto di conferire con il difensore subito dopo l'arresto o il fermo.
3. Nel corso delle indagini preliminari, quando sussistono specifiche ed eccezionali ragioni di cautela, il giudice su richiesta del pubblico ministero può, con decreto motivato, dilazionare, per un tempo non superiore a cinque giorni, l'esercizio del diritto di conferire con il difensore.
4. Nell'ipotesi di arresto o di fermo, il potere previsto dal comma 3 è esercitato dal pubblico ministero fino al momento in cui l'arrestato o il fermato è posto a disposizione del giudice.

Art. 61 c.p.p.

(Estensione dei diritti e delle garanzie dell'imputato)

1. I diritti e le garanzie dell'imputato si estendono alla persona sottoposta alle indagini preliminari.
2. Alla stessa persona si estende ogni altra disposizione relativa all'imputato, salvo che sia diversamente stabilito.

¹¹⁴ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹¹⁵?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

¹¹⁵ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Art. 364 c.p.p.

(Nomina e assistenza del difensore)

1. Il pubblico ministero, se deve procedere a interrogatorio, ovvero a ispezione o confronto cui deve partecipare la persona sottoposta alle indagini, la invita a presentarsi a norma dell'articolo 375.
2. La persona sottoposta alle indagini priva del difensore è altresì avvisata che è assistita da un difensore di ufficio, ma che può nominarne uno di fiducia.
3. Al difensore di ufficio o a quello di fiducia in precedenza nominato è dato avviso almeno ventiquattro ore prima del compimento degli atti indicati nel comma 1 e delle ispezioni a cui non deve partecipare la persona sottoposta alle indagini.
4. Il difensore ha in ogni caso diritto di assistere agli atti indicati nei commi 1 e 3, fermo quanto previsto dall'articolo 245.
5. Nei casi di assoluta urgenza, quando vi è fondato motivo di ritenere che il ritardo possa pregiudicare la ricerca o l'assicurazione delle fonti di prova, il pubblico ministero può procedere a interrogatorio, a ispezione o a confronto anche prima del termine fissato dandone avviso al difensore senza ritardo e comunque tempestivamente. L'avviso può essere omesso quando il pubblico ministero procede a ispezione e vi è fondato motivo di ritenere che le tracce o gli altri effetti materiali del reato possano essere alterati. E' fatta salva, in ogni caso, la facoltà del difensore d'intervenire.
6. Quando procede nei modi previsti dal comma 5, il pubblico ministero deve specificamente indicare, a pena di nullità, i motivi della deroga e le modalità dell'avviso.
7. E' vietato a coloro che intervengono agli atti di fare segni di approvazione o disapprovazione. Quando assiste al compimento degli atti, il difensore può presentare al pubblico ministero richieste, osservazioni e riserve delle quali è fatta menzione nel verbale.

Art. 388 c.p.p.

(Interrogatorio dell'arrestato o del fermato)

1. Il pubblico ministero può procedere all'interrogatorio dell'arrestato o del fermato, dandone tempestivo avviso al difensore di fiducia ovvero, in mancanza, al difensore di ufficio.
2. Durante l'interrogatorio, osservate le forme previste dall'articolo 64, il pubblico ministero informa l'arrestato o il fermato del fatto per cui si procede e delle ragioni che hanno determinato il provvedimento comunicandogli inoltre gli elementi a suo carico e, se non può derivarne pregiudizio per le indagini, le fonti.

Art. 294 c.p.p.

(Interrogatorio della persona sottoposta a misura cautelare personale)

1. Fino alla dichiarazione di apertura del dibattimento, il giudice che ha deciso in ordine all'applicazione della misura cautelare se non vi ha proceduto nel corso dell'udienza di convalida dell'arresto o del fermo di indiziato di delitto procede all'interrogatorio della persona in stato di custodia cautelare in carcere

immediatamente e comunque non oltre cinque giorni dall'inizio dell'esecuzione della custodia, salvo il caso in cui essa sia assolutamente impedita.

1-bis. Se la persona è sottoposta ad altra misura cautelare, sia coercitiva che interdittiva, l'interrogatorio deve avvenire non oltre dieci giorni dalla esecuzione del provvedimento o dalla sua notificazione.

1-ter. L'interrogatorio della persona in stato di custodia cautelare deve avvenire entro il termine di quarantotto ore se il pubblico ministero ne fa istanza nella richiesta di custodia cautelare.

2. Nel caso di assoluto impedimento, il giudice ne dà atto con decreto motivato e il termine per l'interrogatorio decorre nuovamente dalla data in cui il giudice riceve comunicazione della cessazione dell'impedimento o comunque accerta la cessazione dello stesso.

3. Mediante l'interrogatorio il giudice valuta se permangono le condizioni di applicabilità e le esigenze cautelari previste dagli articoli 273, 274 e 275. Quando ne ricorrono le condizioni, provvede, a norma dell'articolo 299, alla revoca o alla sostituzione della misura disposta.

4. Ai fini di quanto previsto dal comma 3, l'interrogatorio è condotto dal giudice con le modalità indicate negli articoli 64 e 65. Al pubblico ministero e al difensore, che ha obbligo di intervenire, è dato tempestivo avviso del compimento dell'atto.

4-bis. Quando la misura cautelare è stata disposta dalla Corte di Assise o dal tribunale, all'interrogatorio procede il presidente del collegio o uno dei componenti da lui delegato.

5. Per gli interrogatori da assumere nella circoscrizione di altro tribunale, il giudice o il presidente, nel caso di organo collegiale, qualora non ritenga di procedere personalmente, richiede il giudice per le indagini preliminari del luogo.

6. L'interrogatorio della persona in stato di custodia cautelare da parte del pubblico ministero non può precedere l'interrogatorio del giudice.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** -
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Art. 364 c.p.p.

(Nomina e assistenza del difensore)

1. Il pubblico ministero, se deve procedere a interrogatorio, ovvero a ispezione o confronto cui deve partecipare la persona sottoposta alle indagini, la invita a presentarsi a norma dell'articolo 375.

2. La persona sottoposta alle indagini priva del difensore è altresì avvisata che è assistita da un difensore di ufficio, ma che può nominarne uno di fiducia.

3. Al difensore di ufficio o a quello di fiducia in precedenza nominato è dato avviso almeno ventiquattro ore prima del compimento degli atti indicati nel comma 1 e delle ispezioni a cui non deve partecipare la persona sottoposta alle indagini.
4. Il difensore ha in ogni caso diritto di assistere agli atti indicati nei commi 1 e 3, fermo quanto previsto dall'articolo 245.
5. Nei casi di assoluta urgenza, quando vi è fondato motivo di ritenere che il ritardo possa pregiudicare la ricerca o l'assicurazione delle fonti di prova, il pubblico ministero può procedere a interrogatorio, a ispezione o a confronto anche prima del termine fissato dandone avviso al difensore senza ritardo e comunque tempestivamente. L'avviso può essere omesso quando il pubblico ministero procede a ispezione e vi è fondato motivo di ritenere che le tracce o gli altri effetti materiali del reato possano essere alterati. E' fatta salva, in ogni caso, la facoltà del difensore d'intervenire.
6. Quando procede nei modi previsti dal comma 5, il pubblico ministero deve specificamente indicare, a pena di nullità, i motivi della deroga e le modalità dell'avviso.
7. E' vietato a coloro che intervengono agli atti di fare segni di approvazione o disapprovazione. Quando assiste al compimento degli atti, il difensore può presentare al pubblico ministero richieste, osservazioni e riserve delle quali è fatta menzione nel verbale.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Art. 26 c.p.p. disp. att.

(Nomina del difensore nei casi di uso di lingua diversa dall'italiano)

1. Anche nei casi di uso di lingua diversa dall'italiano nel procedimento, l'imputato e le altre parti private hanno il diritto di nominare il difensore senza alcun limite derivante dall'appartenenza etnica o linguistica dello stesso.
2. Nei casi previsti dall'articolo 109, comma 2 del codice, quando ciò serve ad assicurare l'effettività della difesa, l'autorità giudiziaria, nell'individuare il difensore di ufficio o nel designare il sostituto del difensore a norma dell'articolo 97, comma 4 del codice, tiene conto dell'appartenenza etnica o linguistica dell'imputato.

Art. 61 c.p.p.

(Estensione dei diritti e delle garanzie dell'imputato)

1. I diritti e le garanzie dell'imputato si estendono alla persona sottoposta alle indagini preliminari.
2. Alla stessa persona si estende ogni altra disposizione relativa all'imputato, salvo che sia diversamente stabilito.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

No.

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Art. 98 c.p.p.

(Patrocinio dei non abbienti)

1. L'imputato, la persona offesa del reato, il danneggiato che intende costituirsi parte civile e il responsabile civile possono chiedere di essere ammessi al patrocinio a spese dello stato, secondo le norme della legge sul patrocinio dei non abbienti.

D. Lgs. 30-5-2002, n. 115

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹¹⁶?

No.

037 - Is there a means test¹¹⁷?

Yes.

Art. 76 D.P.R. 115/2002

1. Può essere ammesso al patrocinio chi è titolare di un reddito imponibile ai fini dell'imposta personale sul reddito, risultante dall'ultima dichiarazione, non superiore a euro 9.723,84.

2. Salvo quanto previsto dall'articolo 92, se l'interessato convive con il coniuge o con altri familiari, il reddito è costituito dalla somma dei redditi conseguiti nel medesimo periodo da ogni componente della famiglia, compreso l'istante.

3. Ai fini della determinazione dei limiti di reddito, si tiene conto anche dei redditi che per legge sono esenti dall'imposta sul reddito delle persone fisiche (IRPEF) o che sono soggetti a ritenuta alla fonte a titolo d'imposta, ovvero ad imposta sostitutiva.

4. Si tiene conto del solo reddito personale quando sono oggetto della causa diritti della personalità, ovvero nei processi in cui gli interessi del richiedente sono in conflitto con quelli degli altri componenti il nucleo familiare con lui conviventi.

4-bis. Per i soggetti già condannati con sentenza definitiva per i reati di cui agli articoli 416-bis del codice penale, 291-quater del testo unico di cui al decreto del Presidente della Repubblica 23 gennaio 1973, n. 43, 73, limitatamente alle ipotesi aggravate ai sensi dell'articolo 80, e 74, comma 1, del testo unico di cui al decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, nonché per i reati commessi avvalendosi delle condizioni previste dal predetto articolo 416-bis ovvero al fine di agevolare l'attività

¹¹⁶ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹¹⁷ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

delle associazioni previste dallo stesso articolo, ai soli fini del presente decreto, il reddito si ritiene superiore ai limiti previsti. (1)

4-ter. La persona offesa dai reati di cui agli articoli 609-bis, 609-quater e 609-octies del codice penale puo' essere ammessa al patrocinio anche in deroga ai limiti di reddito previsti dal presente decreto. (2)

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms -

b. any rules on what documentation should be provided, please specify rules [...]Yes. ART. 79 D.P.R. 115/2002

(Contenuto dell'istanza)

1. L'istanza è redatta in carta semplice e, a pena di inammissibilità, contiene:

- a) la richiesta di ammissione al patrocinio e l'indicazione del processo cui si riferisce, se già pendente;
- b) le generalità dell'interessato e dei componenti la famiglia anagrafica, unitamente ai rispettivi codici fiscali;
- c) una dichiarazione sostitutiva di certificazione da parte dell'interessato, ai sensi dell'articolo 46, comma 1, lettera o), del decreto del Presidente della Repubblica 28 dicembre 2000, n. 445, attestante la sussistenza delle condizioni di reddito previste per l'ammissione, con specifica determinazione del reddito complessivo valutabile a tali fini, determinato secondo le modalità indicate nell'articolo 76;
- d) l'impegno a comunicare, fino a che il processo non sia definito, le variazioni rilevanti dei limiti di reddito, verificatesi nell'anno precedente, entro trenta giorni dalla scadenza del termine di un anno, dalla data di presentazione dell'istanza o della eventuale precedente comunicazione di variazione.

2. Per i redditi prodotti all'estero, il cittadino di Stati non appartenenti all'Unione europea correda l'istanza con una certificazione dell'autorità consolare competente, che attesta la veridicità di quanto in essa indicato.

3. Gli interessati, se il giudice procedente o il consiglio dell'ordine degli avvocati competente a provvedere in via anticipata lo richiedono, sono tenuti, a pena di inammissibilità dell'istanza, a produrre la documentazione necessaria ad accertare la veridicità di quanto in essa indicato.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

ART. 91 D.P.R. 115/2002

(Esclusione dal patrocinio)

1. L'ammissione al patrocinio è esclusa:

- a) per l'indagato, l'imputato o il condannato di reati commessi in violazione delle norme per la repressione dell'evasione in materia di imposte sui redditi e sul valore aggiunto;
- b) se il richiedente è assistito da più di un difensore; in ogni caso gli effetti dell'ammissione cessano a partire dal momento in cui la persona alla quale il beneficio è stato concesso nomina un secondo difensore di fiducia, eccettuati i casi di cui all'articolo 100.

ART. 96 D.P.R. 115/2002

(Decisione sull'istanza di ammissione al patrocinio)

1. Nei dieci giorni successivi a quello in cui è stata presentata o è pervenuta l'istanza di ammissione, [ovvero immediatamente, se la stessa è presentata in udienza a pena di nullità assoluta ai sensi dell'articolo 179, comma 2, del codice di procedura penale,] (1) il magistrato davanti al quale pende il processo o il magistrato che ha emesso il provvedimento impugnato, se procede la Corte di cassazione, verificata l'ammissibilità dell'istanza, ammette l'interessato al patrocinio a spese dello Stato se, alla stregua della dichiarazione sostitutiva prevista dall'articolo 79, comma 1, lettera c), ricorrono le condizioni di reddito cui l'ammissione al beneficio è subordinata.
2. Il magistrato respinge l'istanza se vi sono fondati motivi per ritenere che l'interessato non versa nelle condizioni di cui agli articoli 76 e 92, tenuto conto delle risultanze del casellario giudiziale, (2) del tenore di vita, delle condizioni personali e familiari, e delle attività economiche eventualmente svolte. A tale fine, prima di provvedere, il magistrato può trasmettere l'istanza, unitamente alla relativa dichiarazione sostitutiva, alla Guardia di finanza per le necessarie verifiche.
3. Il magistrato, quando si procede per uno dei delitti previsti dall'articolo 51, comma 3 bis, del codice di procedura penale, ovvero nei confronti di persona proposta o sottoposta a misura di prevenzione, deve chiedere preventivamente al questore, alla direzione investigativa antimafia (DIA) ed alla direzione nazionale antimafia (DNA) le informazioni necessarie e utili relative al tenore di vita, alle condizioni personali e familiari e alle attività economiche eventualmente svolte dai soggetti richiedenti, che potranno essere acquisite anche a mezzo di accertamenti da richiedere alla Guardia di finanza.
4. Il magistrato decide sull'istanza negli stessi termini previsti dal comma 1 anche quando ha richiesto le informazioni di cui ai commi 2 e 3.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

ART. 103 D.P.R. 115/2002

(Informazioni all'interessato in caso di nomina di un difensore di ufficio)

1. Nei casi in cui si deve procedere alla nomina di un difensore d'ufficio, il giudice, il pubblico ministero o la polizia giudiziaria informano la persona interessata delle disposizioni in materia di patrocinio a spese dello Stato e dell'obbligo di retribuire il difensore che eventualmente è nominato d'ufficio, se non ricorrono i presupposti per l'ammissione a tale beneficio.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

No.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

ART. 96 D.P.R. 115/2002

(Decisione sull'istanza di ammissione al patrocinio)

1. Nei dieci giorni successivi a quello in cui è stata presentata o è pervenuta l'istanza di ammissione, [ovvero immediatamente, se la stessa è presentata in udienza a pena di nullità assoluta ai sensi dell'articolo 179, comma 2, del codice di procedura penale,] (1) il magistrato davanti al quale pende il processo o il magistrato che ha emesso il provvedimento impugnato, se procede la Corte di cassazione, verificata l'ammissibilità dell'istanza, ammette l'interessato al patrocinio a spese dello Stato se, alla stregua della dichiarazione sostitutiva prevista dall'articolo 79, comma 1, lettera c), ricorrono le condizioni di reddito cui l'ammissione al beneficio è subordinata.

046 - When a request is denied, is there a legal remedy?

Yes.

ART. 99 D.P.R. 115/2002

(Ricorso avverso i provvedimenti di rigetto dell'istanza)

1. Avverso il provvedimento con cui il magistrato competente rigetta l'istanza di ammissione, l'interessato può proporre ricorso, entro venti giorni dalla notizia avutane ai sensi dell'articolo 97, davanti al presidente del tribunale o al presidente della corte d'appello ai quali appartiene il magistrato che ha emesso il decreto di rigetto.
2. Il ricorso è notificato all'ufficio finanziario che è parte nel relativo processo.
3. Il processo è quello speciale previsto per gli onorari di avvocato e l'ufficio giudiziario procede in composizione monocratica.
4. L'ordinanza che decide sul ricorso è notificata entro dieci giorni, a cura dell'ufficio del magistrato che procede, all'interessato e all'ufficio finanziario, i quali, nei venti giorni successivi, possono proporre ricorso per cassazione per violazione di legge. Il ricorso non sospende l'esecuzione del provvedimento.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. ART. 80 D.P.R. 115/2002
(Nomina del difensore)

1. Chi è ammesso al patrocinio può nominare un difensore scelto tra gli iscritti negli elenchi degli avvocati per il patrocinio a spese dello Stato, istituiti presso i consigli dell'ordine del distretto di corte di appello nel quale ha sede il magistrato competente a conoscere del merito o il magistrato davanti al quale pende il processo.
2. Se procede la Corte di cassazione, il Consiglio di Stato, le sezioni riunite o le sezioni giurisdizionali centrali presso la Corte dei conti, gli elenchi sono quelli istituiti presso i consigli dell'ordine del distretto di corte di appello del luogo dove ha sede il giudice che ha emesso il provvedimento impugnato.
3. Colui che è ammesso al patrocinio può nominare un difensore iscritto negli elenchi degli avvocati per il patrocinio a spese dello Stato scelto anche al di fuori del distretto di cui ai commi 1 e 2.

(1) Articolo così sostituito dalla Legge 24 febbraio 2005, n. 25.

ART. 81 (L)

(Elenco degli avvocati per il patrocinio a spese dello Stato)

1. L'elenco degli avvocati per il patrocinio a spese dello Stato è formato dagli avvocati che ne fanno domanda e che siano in possesso dei requisiti previsti dal comma 2.
2. L'inserimento nell'elenco è deliberato dal consiglio dell'ordine, il quale valuta la sussistenza dei seguenti requisiti e condizioni:

- a) attitudini ed esperienza professionale specifica, distinguendo tra processi civili, penali, amministrativi, contabili, tributari ed affari di volontaria giurisdizione;
- b) assenza di sanzioni disciplinari superiori all'avvertimento irrogate nei cinque anni precedenti la domanda;
- c) iscrizione all'Albo degli avvocati da almeno due anni.

3. È cancellato di diritto dall'elenco l'avvocato per il quale è stata disposta una sanzione disciplinare superiore all'avvertimento.
4. L'elenco è rinnovato entro il 31 gennaio di ogni anno, è pubblico, e si trova presso tutti gli uffici giudiziari situati nel territorio di ciascuna provincia.

(1) Articolo così sostituito dalla Legge 24 febbraio 2005, n. 25.

o.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- | | |
|---|---|
| a. Prosecutor | - |
| b. Judge | - |
| c. lawyer's professional organisation (bar) | - |
| d. legal aid board | - |
| e. other authority, please specify authority [...] | - |
- Yes. ART. 80 D.P.R, 115/2002
(Nomina del difensore)

1. Chi è ammesso al patrocinio può nominare un difensore scelto tra gli iscritti negli elenchi degli avvocati per il patrocinio a spese dello Stato, istituiti presso i consigli dell'ordine del distretto di corte di appello nel quale ha sede il magistrato competente a conoscere del merito o il magistrato davanti al quale pende il processo.
2. Se procede la Corte di cassazione, il Consiglio di Stato, le sezioni riunite o le sezioni giurisdizionali centrali presso la Corte dei conti, gli elenchi sono quelli istituiti presso i consigli dell'ordine del distretto di corte di appello del luogo dove ha sede il giudice che ha emesso il provvedimento impugnato.

3. Colui che è ammesso al patrocinio può nominare un difensore iscritto negli elenchi degli avvocati per il patrocinio a spese dello Stato scelto anche al di fuori del distretto di cui ai commi 1 e 2.

(1) Articolo così sostituito dalla Legge 24 febbraio 2005, n. 25.

ART. 81 (L)

(Elenco degli avvocati per il patrocinio a spese dello Stato)

1. L'elenco degli avvocati per il patrocinio a spese dello Stato è formato dagli avvocati che ne fanno domanda e che siano in possesso dei requisiti previsti dal comma 2.

2. L'inserimento nell'elenco è deliberato dal consiglio dell'ordine, il quale valuta la sussistenza dei seguenti requisiti e condizioni:

a) attitudini ed esperienza professionale specifica, distinguendo tra processi civili, penali, amministrativi, contabili, tributari ed affari di volontaria giurisdizione;

b) assenza di sanzioni disciplinari superiori all'avvertimento irrogate nei cinque anni precedenti la domanda;

c) iscrizione all'Albo degli avvocati da almeno due anni.

3. È cancellato di diritto dall'elenco l'avvocato per il quale è stata disposta una sanzione disciplinare superiore all'avvertimento.

4. L'elenco è rinnovato entro il 31 gennaio di ogni anno, è pubblico, e si trova presso tutti gli uffici giudiziari situati nel territorio di ciascuna provincia.

(1) Articolo così sostituito dalla Legge 24 febbraio 2005, n. 25.

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

ART. 82 D.P.R. 115/2002

(Onorario e spese del difensore)

1. L'onorario e le spese spettanti al difensore sono liquidati dall'autorità giudiziaria con decreto di pagamento, osservando la tariffa professionale in modo che, in ogni caso, non risultino superiori ai valori medi delle tariffe professionali vigenti relative ad onorari, diritti ed indennità, tenuto conto della natura dell'impegno

professionale, in relazione all'incidenza degli atti assunti rispetto alla posizione processuale della persona difesa. (1)

2. Nel caso in cui il difensore nominato dall'interessato sia iscritto in un elenco degli avvocati di un distretto di corte d'appello diverso da quello in cui ha sede il magistrato competente a conoscere del merito o il magistrato davanti al quale pende il processo, non sono dovute le spese e le indennità di trasferta previste dalla tariffa professionale.

3. Il decreto di pagamento è comunicato al difensore e alle parti, compreso il pubblico ministero.

ART. 105 D.P.R. 115/2002

(Liquidazione con provvedimento del giudice per le indagini preliminari)

1. Il giudice per le indagini preliminari liquida il compenso al difensore, all'ausiliario del magistrato, al consulente tecnico di parte e all'investigatore privato, anche se l'azione penale non è esercitata.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

Total annual approved public budget allocated to legal aid (not only criminal proceeding): 86.562.704 euro (CEPEJ 2006)

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

055 - What is the size of the population of your country?

59.000.000 ca

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

ART. 81 D.P.R. 115/2002

(Elenco degli avvocati per il patrocinio a spese dello Stato)

1. L'elenco degli avvocati per il patrocinio a spese dello Stato è formato dagli avvocati che ne fanno domanda e che siano in possesso dei requisiti previsti dal comma 2.

2. L'inserimento nell'elenco è deliberato dal consiglio dell'ordine, il quale valuta la sussistenza dei seguenti requisiti e condizioni:

a) attitudini ed esperienza professionale specifica, distinguendo tra processi civili, penali, amministrativi, contabili, tributari ed affari di volontaria giurisdizione;

b) assenza di sanzioni disciplinari superiori all'avvertimento irrogate nei cinque anni precedenti la domanda;

c) iscrizione all'Albo degli avvocati da almeno due anni.

3. È cancellato di diritto dall'elenco l'avvocato per il quale è stata disposta una sanzione disciplinare superiore all'avvertimento.

4. L'elenco è rinnovato entro il 31 gennaio di ogni anno, è pubblico, e si trova presso tutti gli uffici giudiziari situati nel territorio di ciascuna provincia.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?
Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹¹⁸?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect¹¹⁹ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] - Yes. Defense is always obligatory.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

ART. 82 D.P.R. 115/2002

(Onorario e spese del difensore)

1. L'onorario e le spese spettanti al difensore sono liquidati dall'autorità giudiziaria con decreto di pagamento, osservando la tariffa professionale in modo che, in ogni caso, non risultino superiori ai valori medi delle tariffe professionali vigenti relative ad onorari, diritti ed indennità, tenuto conto della natura dell'impegno professionale, in relazione all'incidenza degli atti assunti rispetto alla posizione processuale della persona difesa. (1)
2. Nel caso in cui il difensore nominato dall'interessato sia iscritto in un elenco degli avvocati di un distretto di corte d'appello diverso da quello in cui ha sede il magistrato competente a conoscere del merito o il magistrato davanti al quale pende il processo, non sono dovute le spese e le indennità di trasferta previste dalla tariffa professionale.
3. Il decreto di pagamento è comunicato al difensore e alle parti, compreso il pubblico ministero.

ART. 105 D.P.R. 115/2002

(Liquidazione con provvedimento del giudice per le indagini preliminari)

¹¹⁸ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹¹⁹ Blindness, deafness et cetera.

1. Il giudice per le indagini preliminari liquida il compenso al difensore, all'ausiliario del magistrato, al consulente tecnico di parte e all'investigatore privato, anche se l'azione penale non è esercitata.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Art. 143 c.p.p.

Nomina dell'interprete.

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.
2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.
3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.
4. La prestazione dell'ufficio di interprete è obbligatoria.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- | | |
|--|--------|
| a. the charge | - Yes. |
| b. the indictment | - Yes. |
| c. the detention order | - Yes. |
| d. the reasons for detention | - Yes. |
| e. the final judgment | - Yes. |
| f. parts of the case file | - Yes. |
| g. the letter of rights | - Yes. |
| h. other documents, please specify [...] | - |

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Art. 143 c.p.p.

(Nomina dell'interprete)

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.
2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.
3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.
4. La prestazione dell'ufficio di interprete è obbligatoria.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer** - Yes.
- b. the questioning of the suspect by the police** - Yes.
- c. the trial** - Yes.
- d. other procedural occasions/activities/hearings, please specify [...]** - Yes. Art. 143 c.p.p.
(Nomina dell'interprete)

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Art. 119 c.p.p.

(Partecipazione del sordo, muto o sordomuto ad atti del procedimento)

1. Quando un sordo, un muto o un sordomuto vuole o deve fare dichiarazioni, al sordo si presentano per iscritto le domande, gli avvertimenti e le ammonizioni ed egli risponde oralmente; al muto si fanno oralmente le domande, gli avvertimenti e le ammonizioni ed egli risponde per iscritto; al sordomuto si presentano per iscritto le domande, gli avvertimenti e le ammonizioni ed egli risponde per iscritto.
2. Se il sordo, il muto o il sordomuto non sa leggere o scrivere, l'autorità procedente nomina uno o più interpreti, scelti di preferenza fra le persone abituate a trattare con lui.

Corte costituzionale, 22 luglio 1999, n. 341 ha dichiarato la illegittimità dell'art. 119 c.p.p. nella parte in cui non prevede che l'imputato sordo, muto, o sordomuto, indipendentemente dal fatto che sappia leggere o scrivere, ha diritto a farsi assistere gratuitamente da un interprete, scelto di preferenza tra le persone abituate a trattare con lui, al fine di poter comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹²⁰

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Art. 65 c.p.p.

(Interrogatorio nel merito)

1. L'autorità giudiziaria contesta alla persona sottoposta alle indagini in forma chiara e precisa il fatto che le è attribuito, le rende noti gli elementi di prova esistenti contro di lei e, se non può deriverne pregiudizio per le indagini, gliene comunica le fonti.
2. Invita, quindi, la persona ad esporre quanto ritiene utile per la sua difesa e le pone direttamente domande.
3. Se la persona rifiuta di rispondere, ne è fatta menzione nel verbale. Nel verbale è fatta anche menzione, quando occorre, dei connotati fisici e di eventuali segni particolari della persona.

Art. 369 c.p.p.

(Informazione di garanzia)

1. Solo quando deve compiere un atto al quale il difensore ha diritto di assistere, il pubblico ministero invia per posta, in piego chiuso raccomandato con ricevuta di ritorno, alla persona sottoposta alle indagini e alla persona offesa una informazione di garanzia con indicazione delle norme di legge che si assumono violate della data e del luogo del fatto e con invito a esercitare la facoltà di nominare un difensore di fiducia.
2. Qualora ne ravvisi la necessità ovvero l'ufficio postale restituisca il piego per irreperibilità del destinatario, il pubblico ministero può disporre che l'informazione di garanzia sia notificata a norma dell'articolo 151.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Art. 65 c.p.p.

(Interrogatorio nel merito)

1. L'autorità giudiziaria contesta alla persona sottoposta alle indagini in forma chiara e precisa il fatto che le è attribuito, le rende noti gli elementi di prova esistenti contro di lei e, se non può deriverne pregiudizio per le indagini, gliene comunica le fonti.
2. Invita, quindi, la persona ad esporre quanto ritiene utile per la sua difesa e le pone direttamente domande.
3. Se la persona rifiuta di rispondere, ne è fatta menzione nel verbale. Nel verbale è fatta anche menzione, quando occorre, dei connotati fisici e di eventuali segni particolari della persona.

¹²⁰ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Art. 65 c.p.p.

(Interrogatorio nel merito)

1. L'autorità giudiziaria contesta alla persona sottoposta alle indagini in forma chiara e precisa il fatto che le è attribuito, le rende noti gli elementi di prova esistenti contro di lei e, se non può deriverne pregiudizio per le indagini, gliene comunica le fonti.
2. Invita, quindi, la persona ad esporre quanto ritiene utile per la sua difesa e le pone direttamente domande.
3. Se la persona rifiuta di rispondere, ne è fatta menzione nel verbale. Nel verbale è fatta anche menzione, quando occorre, dei connotati fisici e di eventuali segni particolari della persona.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

No.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Art. 415-bis c.p.p.

(Avviso all'indagato della conclusione delle indagini preliminari)

1. Prima della scadenza del termine previsto dal comma 2 dell'articolo 405, anche se prorogato, il pubblico ministero, se non deve formulare richiesta di archiviazione ai sensi degli articoli 408 e 411, fa notificare alla persona sottoposta alle indagini e al difensore avviso della conclusione delle indagini preliminari.
2. L'avviso contiene la sommaria enunciazione del fatto per il quale si procede, delle norme di legge che si assumono violate, della data e del luogo del fatto, con l'avvertimento che la documentazione relativa alle indagini espletate è depositata presso la segreteria del pubblico ministero e che l'indagato e il suo difensore hanno facoltà di prenderne visione ed estrarne copia.
3. L'avviso contiene altresì l'avvertimento che l'indagato ha facoltà, entro il termine di venti giorni, di presentare memorie, produrre documenti, depositare documentazione relativa ad investigazioni del difensore, chiedere al pubblico ministero il compimento di atti di indagine, nonché di presentarsi per rilasciare dichiarazioni ovvero chiedere di essere sottoposto ad interrogatorio. Se l'indagato chiede di essere sottoposto ad interrogatorio il pubblico ministero deve procedervi.
4. Quando il pubblico ministero, a seguito delle richieste dell'indagato, dispone nuove indagini, queste devono essere compiute entro trenta giorni dalla presentazione della richiesta. Il termine può essere prorogato dal giudice per le indagini preliminari, su richiesta del pubblico ministero, per una sola volta e per non più di sessanta giorni.
5. Le dichiarazioni rilasciate dall'indagato, l'interrogatorio del medesimo ed i nuovi atti di indagine del pubblico ministero, previsti dai commi 3 e 4, sono utilizzabili se compiuti entro il termine stabilito dal comma 4, ancorché sia decorso il termine stabilito dalla legge o prorogato dal giudice per l'esercizio dell'azione penale o per la richiesta di archiviazione.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Art. 415-bis.

Avviso all'indagato della conclusione delle indagini preliminari.

1. Prima della scadenza del termine previsto dal comma 2 dell'articolo 405, anche se prorogato, il pubblico ministero, se non deve formulare richiesta di archiviazione ai sensi degli articoli 408 e 411, fa notificare alla persona sottoposta alle indagini e al difensore avviso della conclusione delle indagini preliminari.
2. L'avviso contiene la sommaria enunciazione del fatto per il quale si procede, delle norme di legge che si assumono violate, della data e del luogo del fatto, con l'avvertimento che la documentazione relativa alle indagini espletate è depositata presso la segreteria del pubblico ministero e che l'indagato e il suo difensore hanno facoltà di prenderne visione ed estrarne copia.
3. L'avviso contiene altresì l'avvertimento che l'indagato ha facoltà, entro il termine di venti giorni, di presentare memorie, produrre documenti, depositare documentazione relativa ad investigazioni del difensore, chiedere al pubblico ministero il compimento di atti di indagine, nonché di presentarsi per rilasciare dichiarazioni ovvero chiedere di essere sottoposto ad interrogatorio. Se l'indagato chiede di essere sottoposto ad interrogatorio il pubblico ministero deve procedervi.
4. Quando il pubblico ministero, a seguito delle richieste dell'indagato, dispone nuove indagini, queste devono essere compiute entro trenta giorni dalla presentazione della richiesta. Il termine può essere prorogato dal giudice per le indagini preliminari, su richiesta del pubblico ministero, per una sola volta e per non più di sessanta giorni.
5. Le dichiarazioni rilasciate dall'indagato, l'interrogatorio del medesimo ed i nuovi atti di indagine del pubblico ministero, previsti dai commi 3 e 4, sono utilizzabili se compiuti entro il termine stabilito dal comma 4, ancorché sia decorso il termine stabilito dalla legge o prorogato dal giudice per l'esercizio dell'azione penale o per la richiesta di archiviazione.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Art. 415-bis. c.p.p.

(Avviso all'indagato della conclusione delle indagini preliminari)

1. Prima della scadenza del termine previsto dal comma 2 dell'articolo 405, anche se prorogato, il pubblico ministero, se non deve formulare richiesta di archiviazione ai sensi degli articoli 408 e 411, fa notificare alla persona sottoposta alle indagini e al difensore avviso della conclusione delle indagini preliminari.
2. L'avviso contiene la sommaria enunciazione del fatto per il quale si procede, delle norme di legge che si assumono violate, della data e del luogo del fatto, con l'avvertimento che la documentazione relativa alle indagini espletate è depositata presso la segreteria del pubblico ministero e che l'indagato e il suo difensore hanno facoltà di prenderne visione ed estrarne copia.
3. L'avviso contiene altresì l'avvertimento che l'indagato ha facoltà, entro il termine di venti giorni, di presentare memorie, produrre documenti, depositare documentazione relativa ad investigazioni del difensore, chiedere al pubblico ministero il compimento di atti di indagine, nonché di presentarsi per rilasciare dichiarazioni ovvero chiedere di essere sottoposto ad interrogatorio. Se l'indagato chiede di essere sottoposto ad interrogatorio il pubblico ministero deve procedervi.

4. Quando il pubblico ministero, a seguito delle richieste dell'indagato, dispone nuove indagini, queste devono essere compiute entro trenta giorni dalla presentazione della richiesta. Il termine può essere prorogato dal giudice per le indagini preliminari, su richiesta del pubblico ministero, per una sola volta e per non più di sessanta giorni.

5. Le dichiarazioni rilasciate dall'indagato, l'interrogatorio del medesimo ed i nuovi atti di indagine del pubblico ministero, previsti dai commi 3 e 4, sono utilizzabili se compiuti entro il termine stabilito dal comma 4, ancorché sia decorso il termine stabilito dalla legge o prorogato dal giudice per l'esercizio dell'azione penale o per la richiesta di archiviazione.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Art. 143 c.p.p.

(Nomina dell'interprete)

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.
2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.
3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.
4. La prestazione dell'ufficio di interprete è obbligatoria.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Art. 64 c.p.p.

(Regole generali per l'interrogatorio)

1. La persona sottoposta alle indagini, anche se in stato di custodia cautelare o se detenuta per altra causa, interviene libera all'interrogatorio, salve le cautele necessarie per prevenire il pericolo di fuga o di violenze.
2. Non possono essere utilizzati, neppure con il consenso della persona interrogata, metodi o tecniche idonei a influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti .
3. Prima che abbia inizio l'interrogatorio, la persona deve essere avvertita che:
 - a) le sue dichiarazioni potranno sempre essere utilizzate nei suoi confronti;
 - b) salvo quanto disposto dall'articolo 66, comma 1, ha facoltà di non rispondere ad alcuna domanda, ma comunque il procedimento seguirà il suo corso;
 - c) se renderà dichiarazioni su fatti che concernono la responsabilità di altri, assumerà, in ordine a tali fatti, l'ufficio di testimone, salve le incompatibilità previste dall'articolo 197 e le garanzie di cui all'articolo 197-bis.
- 3-bis. L'inosservanza delle disposizioni di cui al comma 3, lettere a) e b), rende inutilizzabili le dichiarazioni rese dalla persona interrogata. In mancanza dell'avvertimento di cui al comma 3, lettera c), le dichiarazioni eventualmente rese dalla persona interrogata su fatti che concernono la responsabilità di altri non sono utilizzabili nei loro confronti e la persona interrogata non potrà assumere, in ordine a detti fatti, l'ufficio di testimone.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Art. 64 c.p.p.

(Regole generali per l'interrogatorio)

1. La persona sottoposta alle indagini, anche se in stato di custodia cautelare o se detenuta per altra causa, interviene libera all'interrogatorio, salve le cautele necessarie per prevenire il pericolo di fuga o di violenze.
2. Non possono essere utilizzati, neppure con il consenso della persona interrogata, metodi o tecniche idonei a influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti .
3. Prima che abbia inizio l'interrogatorio, la persona deve essere avvertita che:
 - a) le sue dichiarazioni potranno sempre essere utilizzate nei suoi confronti;
 - b) salvo quanto disposto dall'articolo 66, comma 1, ha facoltà di non rispondere ad alcuna domanda, ma comunque il procedimento seguirà il suo corso;
 - c) se renderà dichiarazioni su fatti che concernono la responsabilità di altri, assumerà, in ordine a tali fatti, l'ufficio di testimone, salve le incompatibilità previste dall'articolo 197 e le garanzie di cui all'articolo 197-bis.
- 3-bis. L'inosservanza delle disposizioni di cui al comma 3, lettere a) e b), rende inutilizzabili le dichiarazioni rese dalla persona interrogata. In mancanza dell'avvertimento di cui al comma 3, lettera c), le dichiarazioni eventualmente rese dalla persona interrogata su fatti che concernono la responsabilità di altri non sono utilizzabili nei loro confronti e la persona interrogata non potrà assumere, in ordine a detti fatti, l'ufficio di testimone.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Art. 64 c.p.p.

(Regole generali per l'interrogatorio)

1. La persona sottoposta alle indagini, anche se in stato di custodia cautelare o se detenuta per altra causa, interviene libera all'interrogatorio, salve le cautele necessarie per prevenire il pericolo di fuga o di violenze.

2. Non possono essere utilizzati, neppure con il consenso della persona interrogata, metodi o tecniche idonei a influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti .

3. Prima che abbia inizio l'interrogatorio, la persona deve essere avvertita che:

a) le sue dichiarazioni potranno sempre essere utilizzate nei suoi confronti;

b) salvo quanto disposto dall'articolo 66, comma 1, ha facoltà di non rispondere ad alcuna domanda, ma comunque il procedimento seguirà il suo corso;

c) se renderà dichiarazioni su fatti che concernono la responsabilità di altri, assumerà, in ordine a tali fatti, l'ufficio di testimone, salve le incompatibilità previste dall'articolo 197 e le garanzie di cui all'articolo 197-bis.

3-bis. L'inosservanza delle disposizioni di cui al comma 3, lettere a) e b), rende inutilizzabili le dichiarazioni rese dalla persona interrogata. In mancanza dell'avvertimento di cui al comma 3, lettera c), le dichiarazioni eventualmente rese dalla persona interrogata su fatti che concernono la responsabilità di altri non sono utilizzabili nei loro confronti e la persona interrogata non potrà assumere, in ordine a detti fatti, l'ufficio di testimone.

101 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Art. 143 c.p.p.

(Nomina dell'interprete)

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.

2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.

3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.

4. La prestazione dell'ufficio di interprete è obbligatoria.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Art. 468 c.p.p.

(Citazione di testimoni, periti e consulenti tecnici)

1. Le parti che intendono chiedere l'esame di testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 devono, a pena di inammissibilità, depositare in cancelleria, almeno sette giorni prima della data fissata per il dibattimento, la lista con l'indicazione delle circostanze su cui deve vertere l'esame.

2. Il presidente del tribunale o della Corte di assise, quando ne sia fatta richiesta, autorizza con decreto la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210, escludendo le testimonianze vietate dalla legge e quelle manifestamente sovrabbondanti. Il presidente può stabilire che la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 sia effettuata per la data fissata per il dibattimento ovvero per altre successive udienze nelle quali ne sia previsto l'esame. In ogni caso, il provvedimento non pregiudica la decisione sull'ammissibilità della prova a norma dell'articolo 495.

3. I testimoni e i consulenti tecnici indicati nelle liste possono anche essere presentati direttamente al dibattimento.

4. In relazione alle circostanze indicate nelle liste, ciascuna parte può chiedere la citazione a prova contraria di testimoni, periti e consulenti tecnici non compresi nella propria lista, ovvero presentarli al dibattimento.

4-bis. La parte che intende chiedere l'acquisizione di verbali di prove di altro procedimento penale deve farne espressa richiesta unitamente al deposito delle liste. Se si tratta di verbali di dichiarazioni di persone delle quali la stessa o altra parte chiede la citazione, questa è autorizzata dal presidente solo dopo che in dibattimento il giudice ha ammesso l'esame a norma dell'articolo 495.

5. Il presidente in ogni caso dispone di ufficio la citazione del perito nominato nell'incidente probatorio a norma dell'articolo 392 comma 2.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Art. 468 c.p.p.

(Citazione di testimoni, periti e consulenti tecnici)

1. Le parti che intendono chiedere l'esame di testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 devono, a pena di inammissibilità, depositare in cancelleria, almeno sette giorni prima della data fissata per il dibattimento, la lista con l'indicazione delle circostanze su cui deve vertere l'esame.

2. Il presidente del tribunale o della Corte di assise, quando ne sia fatta richiesta, autorizza con decreto la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210, escludendo le testimonianze vietate dalla legge e quelle manifestamente sovrabbondanti. Il presidente può stabilire che la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 sia effettuata per la data fissata per il dibattimento ovvero per altre successive udienze nelle quali ne sia previsto l'esame. In ogni caso, il provvedimento non pregiudica la decisione sull'ammissibilità della prova a norma dell'articolo 495.

3. I testimoni e i consulenti tecnici indicati nelle liste possono anche essere presentati direttamente al dibattimento.

4. In relazione alle circostanze indicate nelle liste, ciascuna parte può chiedere la citazione a prova contraria di testimoni, periti e consulenti tecnici non compresi nella propria lista, ovvero presentarli al dibattimento.

4-bis. La parte che intende chiedere l'acquisizione di verbali di prove di altro procedimento penale deve farne espressa richiesta unitamente al deposito delle liste. Se si tratta di verbali di dichiarazioni di persone delle quali la stessa o altra parte chiede la citazione, questa è autorizzata dal presidente solo dopo che in dibattimento il giudice ha ammesso l'esame a norma dell'articolo 495.

5. Il presidente in ogni caso dispone di ufficio la citazione del perito nominato nell'incidente probatorio a norma dell'articolo 392 comma 2.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Art. 468 c.p.p.

(Citazione di testimoni, periti e consulenti tecnici)

1. Le parti che intendono chiedere l'esame di testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 devono, a pena di inammissibilità, depositare in cancelleria, almeno sette giorni prima della data fissata per il dibattimento, la lista con l'indicazione delle circostanze su cui deve vertere l'esame.
2. Il presidente del tribunale o della Corte di assise, quando ne sia fatta richiesta, autorizza con decreto la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210, escludendo le testimonianze vietate dalla legge e quelle manifestamente sovrabbondanti. Il presidente può stabilire che la citazione dei testimoni, periti o consulenti tecnici nonché delle persone indicate nell'articolo 210 sia effettuata per la data fissata per il dibattimento ovvero per altre successive udienze nelle quali ne sia previsto l'esame. In ogni caso, il provvedimento non pregiudica la decisione sull'ammissibilità della prova a norma dell'articolo 495.
3. I testimoni e i consulenti tecnici indicati nelle liste possono anche essere presentati direttamente al dibattimento.
4. In relazione alle circostanze indicate nelle liste, ciascuna parte può chiedere la citazione a prova contraria di testimoni, periti e consulenti tecnici non compresi nella propria lista, ovvero presentarli al dibattimento.
- 4-bis. La parte che intende chiedere l'acquisizione di verbali di prove di altro procedimento penale deve farne espressa richiesta unitamente al deposito delle liste. Se si tratta di verbali di dichiarazioni di persone delle quali la stessa o altra parte chiede la citazione, questa è autorizzata dal presidente solo dopo che in dibattimento il giudice ha ammesso l'esame a norma dell'articolo 495.
5. Il presidente in ogni caso dispone di ufficio la citazione del perito nominato nell'incidente probatorio a norma dell'articolo 392 comma 2.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Art. 143 c.p.p.

(Nomina dell'interprete)

1. L'imputato che non conosce la lingua italiana ha diritto di farsi assistere gratuitamente da un interprete al fine di potere comprendere l'accusa contro di lui formulata e di seguire il compimento degli atti cui partecipa. La conoscenza della lingua italiana è presunta fino a prova contraria per chi sia cittadino italiano.
2. Oltre che nel caso previsto dal comma 1 e dall'articolo 119, l'autorità procedente nomina un interprete quando occorre tradurre uno scritto in lingua straniera o in un dialetto non facilmente intelligibile ovvero quando la persona che vuole o deve fare una dichiarazione non conosce la lingua italiana. La dichiarazione può anche essere fatta per iscritto e in tale caso è inserita nel verbale con la traduzione eseguita dall'interprete.
3. L'interprete è nominato anche quando il giudice, il pubblico ministero o l'ufficiale di polizia giudiziaria ha personale conoscenza della lingua o del dialetto da interpretare.
4. La prestazione dell'ufficio di interprete è obbligatoria.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

The framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties is not yet implemented in Italy

113 - The right to legal assistance (partially) free of charge:

Partly.

The framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties is not yet implemented in Italy

114 - The right to interpretation and the right to translation of documents:

Partly.

The framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties is not yet implemented in Italy

115 - The right to information concerning fundamental procedural rights:

No.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Partly.

The framework Decision on the on the execution in the European Union of orders freezing property or evidence is not yet implemented in Italy

117 - The right to legal assistance (partially) free of charge:

Partly.

The framework Decision on the on the execution in the European Union of orders freezing property or evidence is not yet implemented in Italy

118 - The right to interpretation and the right to translation of documents:

Partly.

The framework Decision on the on the execution in the European Union of orders freezing property or evidence is not yet implemented in Italy

119 - The right to information concerning fundamental procedural rights:

No.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

the framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders has to be implemented

121 - The right to legal assistance (partially) free of charge:

Partly.

the framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders has to be implemented

122 - The right to interpretation and the right to translation of documents:

Partly

the framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders has to be implemented

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

a. information on the charge

-

b. information on access to the file

-

c. information on the right to remain silent

-

d. information on the right to call/examine witnesses and experts

-

LATVIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹²¹

yes

Criminal Procedure Law

Section 63. Rights of a Detained Person

(1) A detained person has the right:

4) to meet with a defence counsel in conditions ensuring confidentiality of negotiations without special permission of a person directing the proceedings and without time restrictions;

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Section 266. Procedural Drawing-Up of an Arrest

(2) An arrested person shall be familiarised with a protocol, the rights of an arrested person shall be explained to him or her, and he or she shall sign regarding such explanation in the protocol.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

In writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Section 11. Language to be used in Criminal Proceedings

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

¹²¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Section 66. Rights of a Suspect

From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

2) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Section 66. Rights of a Suspect

From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

5) to meet in the place of detention with a defence counsel in conditions ensuring confidentiality of negotiations without special permission of a person directing the proceedings and without time restrictions;

012 - Consultation (in person or by telephone) is possible before questioning by the police¹²²?

No.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹²³?

Yes.

¹²² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹²³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Section 79. Defence Counsel

(4) A defence counsel shall participate in a case from the moment of an agreement or the acceptance of a task, if the defendant has obtained the right to assistance of a defence counsel in accordance with the procedures specified by this Law.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** -
- e. other competences, please specify [...]** - Yes. Section 82. Rights and Duties of a Defence Counsel

in Ensuring Defence in an Individual Procedural Action

(1) In ensuring the defence of a detained person, a suspect, or an accused in an individual procedural action, a defence counsel has the same rights and duties in connection with a concrete procedural action as a defence counsel who participates in the entire proceedings.

(2) A defence counsel may meet with the defendant both before and after a procedural action in order to prepare for the performance of the operation, and to discuss the results thereof.

(3) A defence counsel has also the right, after the completion of an operation and independent of the defendant, to utilise the rights specified for a defence counsel in the submission of a complaint regarding the actions of officials, and in the submission of a request, if such utilisation arises directly from the performed operation and complies with the co-ordinated defence position of the defendants.

(4) A defence counsel, utilising his or her professional knowledge and experience, shall provide a detained person, suspect, or accused with the legal information and recommendations that are necessary in order to designate a defence position corresponding to the conditions, and to implement such position.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Section 150. Examination of a Detained Person, a Suspect, and an Accused

At the beginning of the first examination of a detained person, a suspect, or an accused:

3) an extract from the Law shall be issued to the person wherein the procedural rights and duties thereof are specified, if such extract has not yet been issued to such person in the concrete criminal proceedings;

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally** -
- b. In writing** - Yes.
- c. By a letter of rights** -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Section 11. Language to be used in Criminal Proceedings

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings.

In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Section 130. Admissibility of Evidence

(1) It shall be admissible to use information regarding facts acquired during criminal proceedings, if such information was obtained and procedurally fixed in accordance with the procedures specified in this Law.

(2) Information regarding facts that has been acquired in the following manner shall be recognised as inadmissible and unusable in proving:

1) using violence, threats, blackmail, fraud, or duress;

2) in a procedural action that was performed by a person who, in accordance with this Law, did not have the right to perform such operation;

3) allowing the violations specially indicated in this Law that prohibit the use of a concrete piece of evidence;

4) violating the fundamental principles of criminal proceedings.

(3) Information regarding facts that has been obtained by allowing other procedural violations shall be considered restrictedly admissible, and may be used in proving only in the case where the allowed procedural violations are not essential or may be prevented, or such violations have not influenced the veracity of the acquired information, or if the reliability of such information is approved by the other information acquired in the proceedings.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Section 143. Utilisation of a Sound and Image Recording

(1) During the course of the occurrence of an investigative action, the performer of the investigative action may record sound and image in a recording, notifying persons who participate in the investigative action regarding such recording before the commencement of the investigative action.

030 - If so, how many copies of the audio recording are made?

one

031 - If so, who is entitled to receive a copy of the audio recording?

Section 143. Utilisation of a Sound and Image Recording

(5) The sound and image recording of an investigative action shall be stored together with a criminal case.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Section 143. Utilisation of a Sound and Image Recording

(1) During the course of the occurrence of an investigative action, the performer of the investigative action may record sound and image in a recording, notifying persons who participate in the investigative action regarding such recording before the commencement of the investigative action.

033 - If so, how many copies of the video recording are made?

one

034 - If so, who is entitled to receive a copy of the video recording?

Section 143. Utilisation of a Sound and Image Recording

(5) The sound and image recording of an investigative action shall be stored together with a criminal case.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Section 66. Rights of a Suspect

From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

2) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹²⁴?

No.

037 - Is there a means test¹²⁵?

No.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms** -
- b. any rules on what documentation should be provided, please specify rules [...]**
- c. other rules, please specify [...]** -

¹²⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹²⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Section 66. Rights of a Suspect

From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

2) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally -
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Section 11. Language to be used in Criminal Proceedings

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police - Yes.
- b. prosecutor - Yes.
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

No.

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -

d. other factors, please specify [...] - Yes. From the moment when a person is notified that he or she is recognised as a suspect, such person shall have the following rights:

- p. 2) to invite a defence counsel and enter into an agreement with him or her without delay or to utilise legal assistance ensured by the State if he or she with his or her own funds is unable to enter into an agreement with a defence counsel. A suspected person has the right to receive from a person directing the proceedings a list of advocates practising in the relevant court region, as well as to invite a defence counsel by telephone free of charge;

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]-

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Section 84. Payment for the Assistance of a Defence Counsel

(2) The Cabinet shall determine the procedures for and amount of payment of State ensured legal assistance.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Section 84. Payment for the Assistance of a Defence Counsel

(2) The Cabinet shall determine the procedures for and amount of payment of State ensured legal assistance.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

547 561 Ls (2008.)

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

No information available

055 - What is the size of the population of your country?

2 267 886

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹²⁶?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹²⁷ - Yes.
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] - Yes. Section 83. Mandatory Participation of a Defence Counsel

(1) The participation of a defence counsel is mandatory in criminal proceedings:

¹²⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹²⁷ Blindness, deafness et cetera.

- 1) if a minor, person not having the capacity to act, or person with diminished mental capacity has the right to assistance of a defence counsel;
 - 2) regarding the determination of compulsory measures of a medical nature;
 - 3) if such proceedings are continued in connection with an application regarding the exoneration of a deceased person;
 - 4) if the right to assistance of a defence counsel is held by a person who is not able to completely utilise his or her procedural rights due to a physical or mental deficiency;
 - 5) if the right to assistance of a defence counsel is held by an illiterate person or a person with a level of education so low that such person may not completely utilise his or her procedural rights.
- (2) The participation of a defence counsel is mandatory in criminal proceedings that take place in accordance with the procedures of agreement proceedings from the moment when negotiations are begun with the accused regarding the entering into of an agreement.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

Section 84. Payment for the Assistance of a Defence Counsel

(2) The Cabinet shall determine the procedures for and amount of payment of State ensured legal assistance.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

No.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

067 - Are there any standard fees for legal translation of documents?

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Section 11. Language to be used in Criminal Proceedings

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Section 11. Language to be used in Criminal Proceedings

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

The same like in police

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer -
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.

d. other procedural occasions/activities/hearings, please specify [...] - Yes. Interpreter presents at every Investigative actions

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

No.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Section 11. Language to be used in Criminal Proceedings

(1) Criminal proceedings shall take place in the official language.

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

(3) In issuing procedural documents to a person involved in criminal proceedings who does not understand the official language, such person shall be ensured, in the cases provided for by the Law, a translation of such documents in a language understood by such person.

(4) A person directing the proceedings may perform a separate procedural action in another language by appending a translation of the procedural documents in the official language.

(5) In a criminal proceeding, complaints received in another language shall be translated into the official language only in the case of necessity, which shall be determined by the person directing the proceedings.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

No.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹²⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 406. Issuance of Prosecution

(1) After a decision has been taken regarding the holding of a person criminally liable, a public prosecutor shall immediately:

1) issue a copy of the prosecution to the accused, after having become convinced of the personal identity of him or her, and explain the essence of the prosecution;

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 406. Issuance of Prosecution

(1) After a decision has been taken regarding the holding of a person criminally liable, a public prosecutor shall immediately:

1) issue a copy of the prosecution to the accused, after having become convinced of the personal identity of him or her, and explain the essence of the prosecution;

2) issue to the accused written information regarding the rights of an accused;

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Section 406. Issuance of Prosecution

(1) After a decision has been taken regarding the holding of a person criminally liable, a public prosecutor shall immediately:

1) issue a copy of the prosecution to the accused, after having become convinced of the personal identity of him or her, and explain the essence of the prosecution;

2) issue to the accused written information regarding the rights of an accused;

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** - Yes.

¹²⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Section 406. Issuance of Prosecution

(8) If an accused does not understand the language in which a prosecution has been written, a translation of the prosecution shall be ensured in a language understood by the accused.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Section 412. Completion of Pre-trial Criminal Proceedings by Transferring a Case to a Court

(3) In completing proceedings, a public prosecutor shall:

1) issue to the accused or his or her defence counsel copies of the materials to be transferred to the court, if such materials have not already been issued or decide regarding him or her becoming acquainted with the materials of the criminal case to be transferred to the court;

2) issue to accused or his or her defence counsel a list of the materials transferred to the archives;

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Section 406. Issuance of Prosecution

(1) After a decision has been taken regarding the holding of a person criminally liable, a public prosecutor shall immediately:

2) issue to the accused written information regarding the rights of an accused;

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings immediately

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Section 11. Language to be used in Criminal Proceedings

(1) Criminal proceedings shall take place in the official language.

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

(3) In issuing procedural documents to a person involved in criminal proceedings who does not understand the official language, such person shall be ensured, in the cases provided for by the Law, a translation of such documents in a language understood by such person.

(4) A person directing the proceedings may perform a separate procedural action in another language by appending a translation of the procedural documents in the official language.

(5) In a criminal proceeding, complaints received in another language shall be translated into the official language only in the case of necessity, which shall be determined by the person directing the proceedings.

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment** -
- b. the detention order** - Yes.
- c. the reasons for detention** -
- d. the final judgment (sentence)** - Yes.
- e. parts of the case file** - Yes.
- f. other documents, please specify [...]** - Yes. Files what relate to suspect but only after pre-trial investigation

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Section 265. Arrest Procedures

(1) In arresting a person on the basis of the initiative of an employee of the State police, an employee of an investigative institution, or a public prosecutor, or under the assignment of a person directing the proceedings, such employee or public prosecutor shall immediately inform such person regarding for what such person is being arrested, and shall notify such person that he or she has the right to remain silent, and that everything that such person says may be used against him or her.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Section 265. Arrest Procedures

(1) In arresting a person on the basis of the initiative of an employee of the State police, an employee of an investigative institution, or a public prosecutor, or under the assignment of a person directing the proceedings, such employee or public prosecutor shall immediately inform such person regarding for what such person is being arrested, and shall notify such person that he or she has the right to remain silent, and that everything that such person says may be used against him or her.

100 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Section 11. Language to be used in Criminal Proceedings

(1) Criminal proceedings shall take place in the official language.

(2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to utilise the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

No.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

LITHUANIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹²⁹

yes

Article 21(4) of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter the 'Code') entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code). Pursuant to Article 44(8) of the Code every person suspected of or charged with a criminal offence may defend himself or use a defence lawyer of his choice and, in the absence of sufficient resources to pay to the defence lawyer, is entitled to legal aid free of charge according to the procedure laid down in the law regulating the provision of legal aid guaranteed by the state.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. Article 50(2) of the Code provides for the right of a suspect, defendant or convict to choose and invite a defence lawyer suitable to him. By order of the suspect, defendant or convict, the defence lawyer may be invited by their legal representatives or other persons ordered to do so by the suspect, defendant or convict. If a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not necessary under Article 51 of the Code or mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state (Article 50(3) of the Code).

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof. Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence

¹²⁹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

lawyer. If a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not necessary under Article 51 of the Code or mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state (Article 50(3) of the Code).

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Article 44 of the Code provides that every detained or apprehended person should be immediately provided with the information on his detention or apprehension in the language he understands. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(2) and (7) of the Code).

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof. Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Pursuant to Article 44(8) of the Code every person suspected of or charged with a criminal offence may defend himself or use a defence lawyer of his choice and, in the absence of sufficient resources to pay to the defence lawyer, is entitled to legal aid free of charge according to the procedure laid down in the law regulating the provision of legal aid guaranteed by the state. Article 50(2) of the Code provides for the right of a suspect, defendant or convict to choose and invite a defence lawyer suitable to him. By order of

the suspect, defendant or convict, the defence lawyer may be invited by their legal representatives or other persons ordered to do so by the suspect, defendant or convict. Paragraph 3 of the same Article provides that if a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not mandatory under Article 51 of the Code or is mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Pursuant to Article 48(1)(3) of the Code, a defence lawyer, in addition to his rights referred to in this Article, is entitled to see the apprehended or arrested suspect privately, and the number and duration of such meetings is unlimited.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹³⁰?

Yes.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. Article 48(1)(2) stipulates that in addition to the rights referred to in this Article the defence lawyer is entitled to be present during questioning of the suspected person. Considering the provisions of the Code referred to above, it can be stated that, if the question refers to the first questioning of the suspect, the Code does not provide for this opportunity, i.e. the opportunity for the suspect to see/receive advice before the first questioning, since the defence lawyer will be present during the first questioning only. However, with respect to questioning of the suspect in general, the suspect is entitled to the opportunity to see or consult with the defence lawyer before questioning pursuant to the provisions of Articles of the Code referred to above and the provisions of Article 48(1)(3) of the Code stipulating that the defence lawyer is entitled to see the apprehended or arrested person in private and that the number and duration of such meetings is unlimited.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

¹³⁰ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

016 - Can the lawyer visit his client detained in prison¹³¹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge.

¹³¹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

Pursuant to Article 44(8) of the Code every person suspected of or charged with a criminal offence may defend himself or use a defence lawyer of his choice and, in the absence of sufficient resources to pay to the defence lawyer, is entitled to legal aid free of charge according to the procedure laid down in the law regulating the provision of legal aid guaranteed by the state.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. Article 50(2) of the Code provides for the right of a suspect, defendant or convict to choose and invite a defence lawyer suitable to him. By order of the suspect, defendant or convict, the defence lawyer may be invited by their legal representatives or other persons ordered to do so by the suspect, defendant or convict. Paragraph 3 of the same Article provides that if a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not mandatory under Article 51 of the Code or is mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state.

Article 48(1)(2) stipulates that in addition to the rights referred to in this Article the defence lawyer is entitled to be present during questioning of the suspected person. Pursuant to Article 48(1)(3) of the Code, a defence lawyer, in addition to his rights referred to in this Article, is entitled to see the apprehended or arrested suspect privately, and the number and duration of such meetings is unlimited. Articles 48(1)(4) and 48(1)(5) stipulate that the defence lawyer is entitled to be present during actions taken with respect to the suspect as well as the actions taken at the request of the suspect or his defence lawyer as well as take part in any other actions of evidence collection with the consent given by the investigating official, prosecutor or judge.

It should be noted that Article 51 of the Code stipulates the following cases when presence of the defence lawyer is necessary (mandatory): (1) in the proceedings related to the acts allegedly committed by a minor; (2) in the proceedings against blind, deaf, mute and other persons unable to exercise their right to defence due to their physical or psychological problems; (3) in the proceedings against persons with no command of the language of the proceedings; (4) in the case of conflict of defence of suspects or defendants if at least one of them has a defence lawyer; (5) in the proceedings with respect to the crimes that may carry a life sentence; (6) in the in absentia proceedings according to the procedure laid down in Chapter XXXII of the Code; (7) in the proceedings and trials where a suspect or defendant has been apprehended; (8) in the cases related to a person's extradition or transfer to the International Criminal Court or under the European Arrest Warrant; (9) in the proceedings under the accelerated trial procedure. An investigating official or prosecutor is entitled, by a reasoned decision, or a court is entitled, by a reasoned ruling, to recognise that the presence of the defence lawyer is necessary in other cases as well if, in their opinion, the rights and legitimate interests of the suspect or defendant would not be defended adequately in the absence of the defence lawyer's assistance. In the cases referred to in this Article, the investigating official, prosecutor or court asks to notify the body organising the provision of legal aid guaranteed by the state or a coordinator indicated by such body that the suspect, defendant or convict needs a defence lawyer and appoint the defence lawyer selected by such body when the suspect, defendant or convict has not invited any defence lawyer or has not given order or consent to other persons to invite a defence lawyer. The investigating official, prosecutor or court should appoint a defence lawyer on rest days and holidays or outside the working hours of the body organising the provision of legal aid guaranteed by the state on the basis of a duty list of defence lawyers providing legal aid guaranteed by the state in criminal proceedings.

022 (Check any that apply)

If so, does this right cover:

a. questioning by the police - Yes.

b. questioning by the prosecutor - Yes.

c. questioning by the investigating judge - Yes.

d. questioning by other officials, please specify [...] - Yes. Article 164(1) of the Code stipulates that a pre-trial investigation, which means that individual actions of the pre-trial investigation including the questioning of the suspect, is carried out by the investigating officials. A pre-trial investigation is organised and led by a prosecutor. The prosecutor may decide to carry out the pre-trial investigation in whole or in part by himself. Pursuant to Article 18 of the Code, an investigating officer is a person employed by a pre-trial investigation office who, instructed by the head of this body or a unit thereof, carries out the following pre-trial investigation actions provided for in this Code aiming to ascertain a person who committed a criminal act and the circumstances surrounding such act. Article 165 of the Code specifies the types of pre-trial investigation bodies existing in Lithuania, i.e. the police, State Border Guard Service, Special Investigation Service, Military Police, Department of National Security, Financial Crime Investigation Service, customs of the Republic of Lithuania and Fire and Rescue Department are classified as pre-trial investigation bodies for the purposes of investigating criminal acts that came out in the course of their direct functions provided for in the laws regulating their activities. Pre-trial investigations are also carried out by captains of vessels on a long-distance run in relation to criminal acts committed by crew members and passengers during the long-distance run, officials of the Department of Prisons, directors of lockup facilities, pre-trial detention and penitentiary facilities or officials authorised by them in relation to criminal acts committed at these facilities. Therefore, a defence lawyer is entitled to (and sometimes must) be present during questioning of the suspect carried out by the officials of all above-mentioned pre-trial investigation bodies.

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

a. intervene - Yes.

b. ask questions - Yes.

c. make remarks - Yes.

d. consult with his client in private -

e. other competences, please specify [...] - Yes. All rights of a defence lawyer available to him for the purposes of defending a suspect/defendant are listed in Article 48(1) of the Code, i.e. the defence lawyer is entitled to: (1) have access to the suspect's arrest record; (2) take part in the suspect's questioning; (3) see the apprehended or arrested suspect privately. The number and duration of these meetings is unlimited; (4) take part in the actions taken with respect to the suspect as well as actions taken at the request of the suspect or his defence lawyer; (5) subject to permission by the investigating official, prosecutor or judge, take part in any other evidence collection actions; (6) independently collect the evidence necessary for the defence that can be obtained by the defence lawyer without resorting to procedural coercion means: receive documents and items necessary for defence from companies, institutions and organisations as well as persons, talk to persons about the circumstances of the event known to them, inspect and photograph the crime scene, vehicles or otherwise record the information necessary for defence; (7) have access to the documents of procedural actions during a pre-trial investigation in the cases and according to the procedure laid down in this Code; (8) file motions and request removal; (9) appeal against the actions and decisions of the investigating official, prosecutor, pre-trial investigation judge or court according to the procedure laid down in this Code and to take part in trials examining these complaints.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof. Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. If a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not necessary under Article 51 of the Code or mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state (Article 50(3) of the Code). The Code also provides for the cases when the presence of a defence lawyer is mandatory (Article 51 of the Code referred to in question No 021), i.e. the investigating official, prosecutor or court has a duty of appointing a defence lawyer for free rather than merely informing the suspect, defendant or convict of his right to invite a defence lawyer.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. According to Article 50(1) of the Code, this duty of an investigating official, prosecutor or court arises from the moment of arrest or first questioning of a person, i.e. from the moment that person becomes a suspect. Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 187 of the Code stipulates that a suspect must be delivered a notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally** - Yes.
- b. In writing** - Yes.
- c. By a letter of rights** -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Article 44 of the Code provides that every detained or apprehended person should be immediately provided with the information on his detention or apprehension in the language he understands. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have

enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(2) and (7) of the Code).

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Presence or absence of a lawyer is of no legal significance. If the suspect later disputes his confession, this may be used as evidence. If a suspect repeats his confession in court, a shortened examination of evidence will take place. Article 20 of the Code stipulates that evidence in a criminal procedure shall be material obtained in the manner prescribed by law. Admissibility of the material obtained shall be determined in every case by the judge who is seised of the case. Only such material which proves or disproves at least one circumstance relevant for a fair disposition of the case may be regarded as evidence. Evidence may be only such material which is obtained by lawful means and may be validated by the proceedings laid down in this Code. Judges shall assess the evidence according to their inner conviction based on a scrupulous and objective review of all the circumstances of the case in accordance with the law.

Article 273(1) of the Code stipulates that if a defendant, who is not charged with a very serious or serious crime, admits its guilt to the court after the indictment is announced as wishes to testify immediately agreeing that other evidence may not be examined, the examination of evidence after the defendant's questioning and after meeting the conditions laid down in Article 291 of this Code may be terminated if the circumstances of the criminal act raise no doubt and the prosecutor and the defence lawyer do not object to this shortened examination of evidence. Article 291 of the Code stipulates that in the cases of shortened examination of evidence the chairperson of the full hearing reads out loud the questioning records of the defendants, victims, witnesses, experts and specialists drawn up during the pre-trial investigation or earlier during the hearing, announces the documents available in the case file and presents other evidence. If the members of the trial state that they are aware of all or some of the evidence available and they do not wish such evidence to be examined and announced at trial, the chairperson of the full hearing may limit himself to reciting only such evidence.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Article 179 of the Code stipulates that written records must be kept of investigative actions. The investigative actions may also be photographed, filmed, video- and audio-recorded, imprints and moulds of traces may be made, plans and schemes may be drawn up and other recording methods may be used. Photographs, negatives, digital storage devices, audio and video records as well as other results of using technical means during investigative actions are treated as enclosures to the record of investigative actions. Considering the above, audio records may be used during pre-trial investigative actions (including

the questioning of a suspect) but it does not mean that such records are made during every questioning of a suspect. An investigative official or prosecutor decides whether it is reasonable to take the said measures. Article 260 of the Code also contains a prohibition to use film or television cameras, photo cameras as well as other audio and video recording equipment during a full hearing. Such equipment may be used during the proceeding by the court to record the hearing. Members of the trial may use audio recording equipment in the exercise of their procedural functions provided that such equipment does not interfere with the full hearing.

030 - If so, how many copies of the audio recording are made?

Article 181 of the Code stipulates that a suspect and his defence lawyer, victim and his representative are entitled to have access to the information of pre-trial investigation at any time during the pre-trial investigation, including the right to make copies of or extracts from the materials of the pre-trial investigation. A request to have access to the pre-trial investigation materials or to make copies of or extracts from the materials of pre-trial investigation must be submitted to the prosecutor. The prosecutor is entitled to deny access to all or some information of the pre-trial investigation if such access, in the prosecutor's opinion, could undermine the success of the pre-trial investigation. The prosecutor must draw up a written decision denying access to all or some information of the pre-trial investigation as well as denying the ability to make any copies of or extracts from the materials of pre-trial investigation. This decision may be appealed against to the pre-trial investigation judge within seven days. The pre-trial investigation judge must examine the appeal within three days of the receipt thereof and adopt a ruling. The ruling adopted by the pre-trial investigation judge is not subject to appeal. The prosecutor is not entitled to deny access to all the information of pre-trial investigation or deny the ability to make copies of or extracts from the materials of pre-trial investigation if the pre-trial investigation is completed and the indictment is being drawn up. If a suspect is under arrest, his defence lawyer or the suspect, if he has refused to have a defence lawyer, is entitled to have access to the pre-trial investigation information and make copies of or extracts from the materials of pre-trial investigation. In view of the above-mentioned Article it could be stated that the number of copies of an audio recording is not determined.

031 - If so, who is entitled to receive a copy of the audio recording?

Article 181 of the Code stipulates that a suspect and his defence lawyer, victim and his representative are entitled to have access to the information of pre-trial investigation at any time during the pre-trial investigation, including the right to make copies of or extracts from the materials of the pre-trial investigation.

032 - Is the questioning of the suspect video recorded?

Sometimes.

The same as 029.

033 - If so, how many copies of the video recording are made?

The same as 030.

034 - If so, who is entitled to receive a copy of the video recording?

The same as 031.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Pursuant to Article 44(8) of the Code every person suspected of or charged with a criminal offence may defend himself or use a defence lawyer of his choice and, in the absence of sufficient resources to pay to the defence lawyer, is entitled to legal aid free of charge according to the procedure laid down in the law regulating the provision of legal aid guaranteed by the state.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. If a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not necessary under Article 51 of the Code or mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state (Article 50(3) of the Code). In the cases referred to in this Article, the investigating official, prosecutor or court asks to notify the body organising the provision of legal aid guaranteed by the state or a coordinator indicated by such body that the suspect, defendant or convict needs a defence lawyer and appoint the defence lawyer selected by such body when the suspect, defendant or convict has not invited any defence lawyer or has not given order or consent to other persons to invite a defence lawyer. The investigating official, prosecutor or court should appoint a defence lawyer on rest days and holidays or outside the working hours of the body organising the provision of legal aid guaranteed by the state on the basis of a duty list of defence lawyers providing legal aid guaranteed by the state in criminal proceedings (Article 51(3) of the Code).

The procedure for exercising the right of a suspect, defendant or convict to legal assistance guaranteed by the state is described in more detail in Article 21 of the Law on State-Guaranteed Legal Aid of the Republic of Lithuania as well as Articles 50 and 51 of the Code. It should be noted that the Law on State-Guaranteed Legal Aid provides for two types of legal assistance: primary and secondary. Defence and representation in criminal proceedings are classified as secondary legal assistance in the Republic of Lithuania. In the cases when the defence lawyer's participation in criminal proceedings is mandatory under Article 51 of the Code and other cases referred to in the laws requiring mandatory participation of a defence lawyer, the investigating official, prosecutor or court asks to notify the body organising the provision of legal aid guaranteed by the state or a coordinator indicated by such body that the suspect, defendant or convict needs a defence lawyer and appoint the defence lawyer selected by such body when the suspect, defendant or convict has not invited any defence lawyer or has not given order or consent to other persons to invite a defence lawyer. In the cases when the defence lawyer's participation is necessary under Article 51 of the Code or mandatory in other cases referred to in the laws, secondary legal aid is provided to a suspect regardless of his financial situation or other criteria (Article 12(1) of the Law on State-Guaranteed Legal Aid).

Article 50(3) of the Code and Article 21(6) of the Law on State-Guaranteed Legal Aid state that in cases when a defence lawyer is requested by a suspect, defendant and convict and participation of a defence lawyer is not necessary or mandatory in other cases prescribed by law, an investigating official, prosecutor or court explains to the suspect, defendant or convict the procedure for exercising the right to legal assistance guaranteed by the state, and the decision to provide secondary legal assistance is made by the body organising legal assistance guaranteed by the state on the basis of the request made by the suspect, defendant or convict taking into consideration his financial situation, according to the levels of assets and income for entitlement to the secondary legal assistance established by the Government of the Republic of Lithuania or other circumstances referred to in Article 12 of the Law on State-Guaranteed Legal Aid when state-guaranteed legal assistance is provided regardless of the financial situation. Articles 14(4) and (5) of the Law on State-Guaranteed Legal Aid stipulate that, depending on assets and income, the state guarantees and covers 100 per cent of secondary legal assistance costs where the first level is

established for a person's assets and income or the grounds referred to in Article 12 of the Law on State-Guaranteed Legal Aid, or 50 per cent of secondary legal assistance costs where the second level is established for a person's assets and income.

2.1 Criteria

**Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?
More specifically,**

036 - Is there a merits test¹³²?

No.

037 - Is there a means test¹³³?

Yes.

The financial situation of a suspect, defendant or convict is assessed only in cases when participation of a defence lawyer is not necessary under Article 51 of the Code or not mandatory in other cases prescribed by law. A person wishing to receive legal assistance guaranteed by the state must declare his assets available to him on the last day of the month preceding the month in which the request for legal assistance guaranteed by the state was submitted and his income received in one year (12 last months) before the date on which the request for legal assistance guaranteed by the state was filed. Declared assets and income received are assessed according to the levels of assets and income entitling to the secondary legal assistance guaranteed by the state as established by the Government of the Republic of Lithuania. Levels of assets and income are established by defining the maximum thresholds for the value of assets and amount of annual income, which may not be exceeded by the person wishing to receive secondary legal assistance. If the first level of assets and income is determined, 100 per cent of the costs of secondary legal assistance is covered. If the second level of assets and income is determined, 50 per cent of the costs of secondary legal assistance is covered.

It is necessary to mention the fact that in cases where participation of a defence lawyer is not necessary a suspect, defendant or convict may be entitled to receive secondary legal assistance regardless of his financial situation if he meets the requirements for any of the cases laid down in Article 12 of the Law on State-Guaranteed Legal Aid (for instance, persons receiving social allowances under the Law on Cash Social Assistance for Low-Income Families and Single Residents of the Republic of Lithuania; persons who have been established a severe disability or for whom incapacity for work has been recognised or who have reached the pensionable age and for whom the level of considerable special needs has been established under the procedure established by law, also guardians (custodians) of these persons; persons who have presented proof that they cannot dispose of their assets and funds for objective reasons and that for these reasons their assets and annual income which they can freely dispose of do not exceed the asset and income levels established by the Government of the Republic of Lithuania for the provision of legal assistance).

¹³² A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹³³ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms

- Yes.

b. any rules on what documentation should be provided, please specify rules [...] Yes. The following documentary proof of a person's entitlement to the secondary legal assistance must accompany the request of secondary legal assistance of the prescribed form: an annual return of assets of a person (family) or other documentary proof of the person's entitlement to the secondary legal assistance regardless of his financial situation (for instance, a certificate confirming that the person receives social allowances; a disability certificate confirming the disability level, level of work capacity or level of special needs of that person, etc. according to Article 12 of the Law on State-Guaranteed Legal Aid). It should be noted that the above-mentioned rules only apply in cases where participation of a defence lawyer is not necessary or mandatory. If participation of a defence lawyer is necessary or mandatory, the request in the prescribed form needs not to be filed as the suspect's or defendant's entitlement to legal assistance is proven by a ruling adopted by the investigating official, prosecutor or court.

c. other rules, please specify [...]

-

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

As already mentioned, legal assistance guaranteed by the state is provided free of charge in all cases when participation of a defence lawyer is necessary under Article 51 of the Code or mandatory in other cases prescribed by law. The list of cases when participation of a defence lawyer is necessary is not definitive, and the investigating official, prosecutor or court may, by its reasoned decision, recognise on a case-by-case basis that participation of a defence lawyer is mandatory if, in their opinion, the rights and legitimate interests of the suspect or defendant could not be properly defended in the absence of a defence lawyer.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Pursuant to the provisions of Article 50(1) of the Code, an investigating official, prosecutor or court has a duty of clarifying to the suspect or defendant his or her right to defence from the moment of apprehension or first questioning and provide an opportunity to exercise this right. The record is drawn up with regard to the suspect's or defendant's request to have a defence lawyer or refusal by the defence lawyer. If a suspect, defendant or convict requests to secure the presence of a defence lawyer and the presence of the defence lawyer is not necessary under Article 51 of the Code or mandatory under other cases prescribed by law, an investigating official, prosecutor or court clarifies to the suspect, defendant or convict the procedure of entitlement to the legal aid guaranteed by the state (Article 50(3) of the Code).

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

The same as 025.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police - Yes.
- b. prosecutor - Yes.
- c. judge - Yes.
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

An investigating official, prosecutor or court must clarify to the suspect and defendant his right to have a defence lawyer from the moment of arrest or first questioning and enable the suspect or defendant to exercise this right.

If participation of a defence lawyer is not necessary under Article 51 of the Code or not mandatory in other cases prescribed by law, the decision on the provision of legal assistance guaranteed by the state is made by the service of legal assistance guaranteed by the state within three working days of the day of receipt of the request in the prescribed form and documentary proof of the person's entitlement to receive legal assistance.

If participation of a defence lawyer is necessary under Article 51 of the Code or mandatory in other cases prescribed by law, the decision is made by the investigating official, prosecutor or court. In this case, the service of legal assistance guaranteed by the state must immediately select a defence lawyer at the request of these officials.

046 - When a request is denied, is there a legal remedy?

Yes.

If participation of a defence lawyer is not necessary under Article 51 of the Code or not mandatory in other cases prescribed by law and the decision on the provision of legal assistance guaranteed by the

state is made by the service of legal assistance guaranteed by the state, this decision may be appealed against to the administrative court or commission of administrative disputes. If participation of a defence lawyer is necessary, it is a duty of an investigating official, prosecutor or court, in carrying the actions that have direct significance to the procedural status and defence possibilities of a prosecuted person, to always check for the grounds of mandatory participation of a defence lawyer and appoint a defence lawyer for the suspect or defendant if such suspect or defendant has not invited a defence lawyer.

047 *(Check any that apply)*

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] - Yes. In selecting a defence lawyer, the service of legal assistance guaranteed by the state also takes into account the place of residence of the applicant, place of work of the defence lawyer, workload of the defence lawyer and other circumstances significant to the provision of secondary legal assistance.

048 *(Check any that apply)*

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

In criminal proceedings, suspects, defendants or convicts may be represented by defence lawyers regularly providing secondary legal assistance and defence lawyers who provide secondary legal assistance when needed and who have entered into the relevant agreements with the service providing legal assistance guaranteed by the state. A defence lawyer regularly providing secondary legal assistance is paid a regular monthly salary. Defence lawyers who provide secondary legal assistance when needed are paid a fixed fee for every case depending on the difficulty of the case (according to the rates fixed by the Government for the provision of secondary legal assistance during one phase of the proceedings or for the provision of secondary legal assistance in individual procedural actions, if such procedural actions are specified in the rules approved by the Government).

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

The maximum number of hours for one phase of the proceedings or for completing a procedural action only applies to the defence lawyers who provide legal assistance when needed. This number determines the amount of remuneration. If the time actually spent by a defence lawyer who provides legal assistance when needed is double the time fixed for completing the proceedings (procedural action), the defence lawyer is entitled to contact the service of legal assistance guaranteed by the state asking to adopt a decision on additional remuneration.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

The duty to pay some (50 per cent) costs of secondary legal assistance may be imposed by the decision of the service of legal assistance guaranteed by the state if it was determined that a suspect or defendant has assets and income of level two. It should be noted that the service of legal assistance guaranteed by the state adopts a decision to appoint a defence lawyer only in those cases when participation of a defence lawyer is not necessary or mandatory. If participation of a defence lawyer is necessary or mandatory under the decision of the investigating official, prosecutor or court, the state guarantees and covers 100 per cent of costs of secondary legal assistance.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

In 2008, LTL 7 758 056 was spent on legal representation in criminal proceedings involving the provision of legal assistance guaranteed by the state. The exchange rate between the litas and the euro is LTL 3.4528 to EUR 1.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Such data are not available to us.

055 - What is the size of the population of your country?

3 343 500

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Legal assistance guaranteed by the state may only be provided by defence lawyers who have entered into the relevant agreements with the services of legal assistance guaranteed by the state. Only the defence lawyers who provide a favourable opinion of the Lithuanian Bar Association with regard to their suitability to provide legal assistance guaranteed by the state may take part in the competitions for defence lawyers providing secondary legal assistance.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board - Yes.

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...]-

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹³⁴?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹³⁵ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. It should be noted that Article 51 of the

Code stipulates the following cases when presence of the defence lawyer is necessary (mandatory): (1) in the proceedings related to the acts allegedly committed by a minor; (2) in the proceedings against blind, deaf, mute and other persons unable to exercise their right to defence due to their physical or psychological problems; (3) in the proceedings against persons with no command of the language of the proceedings; (4) in the case of conflict of defence of suspects or defendants if at least one of them has a defence lawyer; (5) in the proceedings with respect to the crimes that may carry a life sentence; (6) in the in absentia proceedings according to the procedure laid down in Chapter XXXII of the Code; (7) in the proceedings and trials where a suspect or defendant has been apprehended; (8) in the cases related to a person's extradition or transfer to the International Criminal Court or under the European Arrest Warrant; (9) in the proceedings under the accelerated trial procedure. An investigating official or prosecutor is entitled, by a reasoned decision, or a court is entitled, by a reasoned ruling, to recognise that the presence of the defence lawyer is necessary in other cases as well if, in their opinion, the rights and legitimate interests of the suspect or defendant would not be defended adequately in the absence of the defence lawyer's assistance.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

In all cases where participation of a defence lawyer is necessary and a suspect or defendant has not invited a defence lawyer and the defence lawyer has been appointed by the investigating official, prosecutor or court, the state guarantees and covers 100 per cent of legal assistance costs.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

As already mentioned (question No 060), the Code provides for some cases which require participation of a defence lawyer. Regardless of his entitlement to legal assistance guaranteed by the state, a person may himself enter into agreement on the provision of legal services with a privately practicing defence lawyer. In this case, the costs must be covered by the person himself. Legal assistance guaranteed by the state can only be provided by defence lawyers who have entered into the relevant agreements with the services of legal assistance guaranteed by the state, and other attorneys or other 'special' lawyers may not be appointed.

¹³⁴ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹³⁵ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Article 44 of the Code provides that every detained or apprehended person should be immediately provided with the information on his detention or apprehension in the language he understands. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(2) and (7) of the Code).

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof. Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. The procedural costs of a witness, victim, expert, specialist and interpreter are covered using the resources of a pre-trial investigation body, prosecution office or court. The procedure and amount of reimbursement of these costs are established by the Government of the Republic of Lithuania or its authorised body (Article 104(1) of the Code). In making its judgment, the court is entitled to decide that the procedural costs should be recovered from the convict, except the costs to be paid to the interpreter (Article 105(1) of the Code).

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge** - Yes.
- b. the indictment** - Yes.
- c. the detention order** - Yes.

- d. the reasons for detention** - Yes.
- e. the final judgment** - Yes.
- f. parts of the case file** - Yes.
- g. the letter of rights** -
- h. other documents, please specify [...]** - Yes. Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.
According to mentioned Article all a relevant documents must be translated.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.

Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 187 of the Code stipulates that a suspect must be delivered a notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

Pursuant to Articles 21, 44 and 187 of the Code, this duty of an investigating official, prosecutor or court arises from the moment of arrest or first questioning of a person, i.e. from the moment that person becomes a suspect and after determination that the suspect has no command of/does not know Lithuanian.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as

having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Also participation of a defence lawyer is required. Article 51 of the Code stipulates the following cases when presence of the defence lawyer is necessary (mandatory): (2) in the proceedings against blind, deaf, mute and other persons unable to exercise their right to defence due to their physical or psychological problems; (3) in the proceedings against persons with no command of the language of the proceedings. In the cases referred to in this Article, the investigating official, prosecutor or court asks to notify the body organising the provision of legal aid guaranteed by the state or a coordinator indicated by such body that the suspect, defendant or convict needs a defence lawyer and appoint the defence lawyer selected by such body when the suspect, defendant or convict has not invited any defence lawyer or has not given order or consent to other persons to invite a defence lawyer. The investigating official, prosecutor or court should appoint a defence lawyer on rest days and holidays or outside the working hours of the body organising the provision of legal aid guaranteed by the state on the basis of a duty list of defence lawyers providing legal aid guaranteed by the state in criminal proceedings.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer** - Yes.
- b. the questioning of the suspect by the police** - Yes.
- c. the trial** - Yes.

d. other procedural occasions/activities/hearings, please specify [...] - Yes. Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Article 51 of the Code stipulates the following cases when presence of the defence lawyer is necessary (mandatory): (2) in the proceedings against blind, deaf, mute and other persons unable to exercise their right to defence due to their physical or psychological problems; (3) in the proceedings against persons with no command of the language of the proceedings (in this case also applicable Article 8 of the Code). Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

The same as 082.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

The same as 070.

085 *(Check any that apply)*

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing - Yes.

c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

The same as 072.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹³⁶

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 44 of the Code provides that every detained or apprehended person should be immediately provided with the information on his detention or apprehension in the language he understands. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(2) and (7) of the Code).

Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 21(4) of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter the 'Code') entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge. Article 187 of the Code stipulates that a suspect must be delivered a notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 44 of the Code provides that every detained or apprehended person should be immediately provided with the information on his detention or apprehension in the language he understands. Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(2) and (7) of the Code).

Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 21(4) of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter the 'Code') entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge. Article 187 of the Code stipulates that a suspect must be delivered a

¹³⁶ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge. Article 187 of the Code stipulates that a suspect must be delivered a notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

Pursuant to Articles 21, 44 and 187 of the Code, this duty of an investigating official, prosecutor or court arises from the moment of arrest or first questioning of a person, i.e. from the moment that person becomes a suspect.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be

interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge.

Article 181 of the Code stipulates that a suspect and his defence lawyer, victim and his representative are entitled to have access to the information of pre-trial investigation at any time during the pre-trial investigation, including the right to make copies of or extracts from the materials of the pre-trial investigation. A request to have access to the pre-trial investigation materials or to make copies of or extracts from the materials of pre-trial investigation must be submitted to the prosecutor. The prosecutor is entitled to deny access to all or some information of the pre-trial investigation if such access, in the prosecutor's opinion, could undermine the success of the pre-trial investigation. The prosecutor must draw up a written decision denying access to all or some information of the pre-trial investigation as well as denying the ability to make any copies of or extracts from the materials of pre-trial investigation. This decision may be appealed against to the pre-trial investigation judge within seven days. The pre-trial investigation judge must examine the appeal within three days of the receipt thereof and adopt a ruling. The ruling adopted by the pre-trial investigation judge is not subject to appeal. The prosecutor is not entitled to deny access to all the information of pre-trial investigation or deny the ability to make copies of or extracts from the materials of pre-trial investigation if the pre-trial investigation is completed and the indictment is being drawn up. If a suspect is under arrest, his defence lawyer or the suspect, if he has refused to have a defence lawyer, is entitled to have access to the pre-trial investigation information and make copies of or extracts from the materials of pre-trial investigation. In view of the above-mentioned Article it could be stated that the number of copies of an audio recording is not determined.

Article 220(4) of the Code stipulates that the prosecutor must deliver a copy of the indictment to the defendant as well. In addition, Article 237 of the Code entitles the prosecutor, defendant, legal representative, defence lawyer, victim, civil plaintiff, civil respondent and their representatives to have access to additional information received after the indictment was drawn up from the date on which the case file was received by court and to other materials of the case file within the deadline fixed by the judge, make extracts from or copies of such materials. If a defendant is under arrest, access to the above-mentioned materials of the case file is given to his defence lawyer. The defence lawyer is entitled to make extracts from or copies of these materials. If the defendant refuses to have a defence lawyer, he has access to the materials of the case file and may make extracts or copies thereof. If a defendant has no defence lawyer, one is appointed by the court. Having read the above-mentioned materials or made extracts or copies thereof, the defence lawyer informs the defendant of the materials of the case files and notifies the court thereof. Members of the process are entitled to have access to the materials of the case file, make extracts or copies thereof after the expiry of the deadline provided for in this Article if their actions do not interfere with the trial.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings Article 21 of the Code defines that a suspect is a party to a pre-trial investigation. A suspect is a person apprehended on suspicion of a criminal act or a person questioned about an act for which he is suspected or a person summoned for questioning under a notice of suspicion drawn up as provided for in Article 187 of this Code. Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge. Article 187 of the Code stipulates that a suspect must be delivered a notice of suspicion against his signature before the first questioning. This notice must indicate the criminal act (the place and time where it was committed and other circumstances) as well as the criminal law providing for such a criminal act; it must also list the rights of a suspect.

Pursuant to Articles 21 and 187 of the Code, this duty of an investigating official, prosecutor or court arises from the moment of arrest or first questioning of a person, i.e. from the moment that person becomes a suspect.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment** - Yes.
- b. the detention order** - Yes.
- c. the reasons for detention** - Yes.
- d. the final judgment (sentence)** - Yes.
- e. parts of the case file** - Yes.
- f. other documents, please specify [...]** - Yes. Article 181 of the Code stipulates that a suspect and/or his defence lawyer is entitled, subject to a prosecutor's permission in the cases referred to in the said Article,

to have access to the information of pre-trial investigation at any time (i.e. to all the records of completed pre-trial investigation actions, expert examination reports, findings of specialists, submitted complaints, motions, etc.) as well as make copies of or extracts from the materials of pre-trial investigation.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 80(1) of the Code stipulates that a person who may testify on the criminal act potentially committed by him may not be questioned as a witness, except when he agrees to give such testimony subject to the requirements for such witness statements laid down in Article 82(3) of this Code. Accordingly, Article 82(3) of the Code stipulates that a person, who is being questioned about the criminal act potentially committed by him by order of the prosecutor, is entitled to have an authorised representative during the questioning and to demand being recognised a suspect. Such person is not subject to any amenability for false testimony.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
The same as 094.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Article 8 of the Code stipulates that parties to the criminal proceedings who have no command of Lithuanian are entitled to make statements, give evidence and explanations, file motions and complaints, speak their mother tongue or any other language known to them at trial. In all these cases as well as having access to the files of the proceedings, the parties to the proceedings are entitled to use the services of an interpreter/translator according to the procedure laid down in this Code. File documents swerved to the suspect, defendant or convict in cases provided for in the Code as well as to other parties to the proceedings must be translated to their mother tongue or any other language known to them. Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Article 21(4) of the Code entitles a suspect to the following: the right to know the allegations; to have a defence lawyer from the moment of apprehension or first questioning; to testify; to have access to the documents and items material to the investigation; to file motions; to request removal; to have access to the materials of the pre-trial investigation; to appeal against the actions and decisions of the investigating official, prosecutor or investigating judge.

Every person suspected of or charged with a criminal offence is entitled to an immediate and in-depth clarification, in a language he understands, of the nature and basis of charges brought against him, have enough time and possibilities to prepare for defence, interrogate witnesses or ask for the witnesses to be interrogated, use the translation/interpretation services for free if he is unable to understand or speak Lithuanian (Article 44(7) of the Code).

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Article 45 of the Code provides for the duty of the judge, prosecutor and investigating official to explain their procedural rights to the members of the proceedings and ensure their possibilities to exercise thereof.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
The same as 089.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

The same as 102.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

We would like to note that a suspect may exercise all his rights referred to in the Questionnaire in all proceedings and actions provided for in the Code, including all the procedures referred to in Chapter 5 of the Questionnaire. However, we would like to point out that the procedures referred to in Section 5.4 of the Questionnaire with respect to Council framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition of confiscation orders have not been included into the Code (i.e. the current version of the Code does not provide for a possibility to recognise and enforce a judgment adopted by a court of another EU Member State in criminal proceedings to confiscate the property of a legal or natural person) since the said Council framework Decision has not been transposed into national law of the Republic of Lithuania; therefore, all the rights referred to in the Questionnaire (and the Code respectively) cannot be exercised in the proceedings referred to in the above-mentioned Council framework Decision. It should be noted that Lithuania has already drafted a bill amending Articles 34, 1321, 151, 342, 362, 364, 365, 409, 412 of the Code of Civil Procedure of the Republic of Lithuania, amending and supplementing the Annex to the Code and adding new Articles 173, 3653, 3654 to the Code with a view to implementing Council framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition of confiscation orders, which is currently being discussed by the Government of the Republic of Lithuania. After the parliament of the Republic of Lithuania adopts the above-mentioned bill amending the Code, all personal rights provided for in the Code (and the rights referred to in the Questionnaire accordingly) would be available for exercise in all the procedures referred to in the said Council framework Decision.

It should be noted that given the above-mentioned arguments and the fact that the rest questions of the Questionnaire must be answered, the answer for said questions will “No” simply to ensure that the answers has been provided.

121 - The right to legal assistance (partially) free of charge:

No.

122 - The right to interpretation and the right to translation of documents:

No.

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

a. information on the charge

-

b. information on access to the file

-

c. information on the right to remain silent

-

d. information on the right to call/examine witnesses and experts

-

LUXEMBOURG

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹³⁷

yes

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats."

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

police or instructing judge: before 1st questioning

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats."

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

police or instructing judge: before 1st questioning

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Both orally and in writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats."

¹³⁷ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats."

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

no specific provision / done so in practice

012 - Consultation (in person or by telephone) is possible before questioning by the police¹³⁸?

Yes.

no specific provision

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹³⁹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

¹³⁸ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹³⁹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats." + article 81, para. 2, du Code d'instruction criminelle:

"(2) Avant de procéder à l'interrogatoire, le juge d'instruction donne avis à l'inculpé de son droit de choisir un conseil parmi les avocats inscrits au tableau ou admis au stage. A défaut de choix il lui en désigne un d'office, si l'inculpé le demande."

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor -
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private -
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats." + article 81, para. 2 du Code d'instruction criminelle:

"(2) Avant de procéder à l'interrogatoire, le juge d'instruction donne avis à l'inculpé de son droit de choisir un conseil parmi les avocats inscrits au tableau ou admis au stage. A défaut de choix il lui en désigne un d'office, si l'inculpé le demande."

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights - Yes.

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Article 39, para. 7 of the Code d'instruction criminelle

"(7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats."

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

article 81, para 8, du Code d'instruction criminelle:

"(8) Détenu ou libre, l'inculpé ne peut être interrogé qu'en présence de son conseil, ou celui-ci dûment appelé, sauf s'il y renonce expressément. Le ministère public ainsi que la partie civile peuvent assister à l'interrogatoire."

029 - Is the questioning of the suspect audio recorded?

No.

030 - If so, how many copies of the audio recording are made?

031 - If so, who is entitled to receive a copy of the audio recording?

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

loi du 10 août 1991 sur la profession d'avocat et règlement grand-ducal du 18 septembre 1995 concernant l'assistance judiciaire

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁴⁰?

No.

037 - Is there a means test¹⁴¹?

Yes.

insufficient means (taking into account wage, other sources of income and number of persons at charge)

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms - Yes.
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

EU or Luxembourg citizenship or Luxembourg residence or international agreement on the subject

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

No.

041 - When does the duty to inform the suspect of this right arise?

¹⁴⁰ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁴¹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board -

e. other authority, please specify authority [...] Yes. Bâtonnier de l'Ordre des avocats (President of the Bar Association)

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?
No.

046 - When a request is denied, is there a legal remedy?

Yes.

possibility of appeal, article 4 of the above-mentioned regulation

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] -

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board -

e. other authority, please specify authority [...]- Yes. Bâtonnier de l'Ordre des avocats (President of the Bar Association)

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per hour.

see above regulation, article 9

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

n/a

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

n/a

055 - What is the size of the population of your country?

approximately 500 0000

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar -

c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁴²?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect - Yes.

b. mental capacity of the suspect -

c. physical handicaps of the suspect¹⁴³ -

d. deprivation of liberty of the suspect -

e. factual complexity of the case -

¹⁴² Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁴³ Blindness, deafness et cetera.

- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

upcoming legal provision on free legal assistance for children

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

article 190-1, para. 4, du Code d'instruction criminelle:

"(4) Dans le cas où le prévenu ou le témoin ne parlent pas la même langue ou ne parlent pas une des langues en usage au pays, ou s'il est nécessaire de traduire un document versé aux débats, le président désigne d'office un interprète et lui fait prêter serment de traduire fidèlement les paroles prononcées ou les écrits versés."

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

Règl. gd. 23 décembre 1972 portant nouvelle fixation des indemnités à allouer en toutes matières aux témoins, experts et interprètes

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- | | |
|---|--------|
| a. the charge | - Yes. |
| b. the indictment | - Yes. |
| c. the detention order | - Yes. |
| d. the reasons for detention | - Yes. |
| e. the final judgment | - Yes. |
| f. parts of the case file | - Yes. |
| g. the letter of rights | - Yes. |
| h. other documents, please specify [...] | - |

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

article 86-1, para. 2, du Code d'instruction criminelle:

"S'il est fait appel à un interprète, les dispositions de l'article 70, paragraphe 2, sont applicable."

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Règl. gd. 23 décembre 1972 portant nouvelle fixation des indemnités à allouer en toutes matières aux témoins, experts et interprètes

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. questioning by the instructing judge

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

article 190-2 du Code d'instruction criminelle:

"(1) Si le prévenu est sourd-muet et ne sait pas écrire, le président

nomme d'office, en qualité d'interprète, la personne qui a le plus l'habitude de converser avec lui.

(2) Les autres dispositions du précédent article sont applicables.

(3) Dans le cas où le prévenu visé au présent article sait écrire, le greffier écrit les questions ou observations qui lui sont faites; elles sont remises au prévenu, qui donne par écrit ses réponses. Il est fait lecture du tout par le greffier.

(4) Les mêmes dispositions s'appliquent au témoin sourd-muet."

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁴⁴

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

article 81 para.1 of the Code d'instruction criminelle:

"(1) Lors de la première comparution de l'inculpé détenu ou libre, le juge d'instruction constate l'identité de l'inculpé, lui fait connaître expressément chacun des faits qui lui sont imputés et lui indique les actes accomplis au cours de la procédure de flagrant crime ou délit ou au cours de l'enquête préliminaire."

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

see above, answer to question 87a and article 81, para. 12:

"(12) Les dispositions des paragraphes 1, 2, 4, 6, 8 et 10 sont à observer à peine de nullité."

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings before the 1st questioning by the instructing judge, although in practice it is also done when questioned by the police

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

No.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

article 85 of the Code d'instruction criminelle:

"(1) Après le premier interrogatoire, l'inculpé, son conseil et la partie civile peuvent prendre communication des pièces du dossier, sans déplacement, la veille de chaque interrogatoire et de tous autres devoirs pour lesquels l'assistance d'un conseil est admise.

(2) En outre, la communication des pièces peut être demandée en tout état de cause par voie de requête sur papier libre adressée par les parties intéressées ou leurs conseils au juge d'instruction. La communication des rapports d'expertise ne peut jamais être refusée."

¹⁴⁴ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

095 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

No.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

100 - When does the duty to inform the suspect of this right arise?

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

article 69, para.3, du Code d'instruction criminelle:

"(3) L'inculpé et son conseil ainsi que la partie civile ont le droit de réclamer l'audition des témoins qu'ils désirent faire entendre. Ils doivent, sous peine d'irrecevabilité de la demande, articuler les faits destinés à faire l'objet du témoignage. Ils peuvent de même demander que l'inculpé soit interrogé en présence du témoin qu'ils indiquent à ces fins dans leur demande." + article 153 du Code d'instruction criminelle:

"...La personne citée proposera sa défense, et fera entendre ses témoins si elle en a amené ou fait citer, et si, aux termes de l'article suivant, elle est recevable à les produire..."

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

No.

105 - When does the duty to inform the suspect of this right arise?

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

NETHERLANDS

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁴⁵

no

002 - If so, when can this right be effected:

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

004 - If so, when does the duty to inform the suspect of this right arise?

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Article 38 of the Code of Criminal Procedure (CCP) states that the suspect has the right to choose one or more lawyers at any time. If legal aid is paid for by the State, the suspect may indicate a preference for a specific lawyer, provided that this lawyer is participating/admitted to the system of state-financed legal aid.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Article 50, para 1 of the CCP contains the guarantee that a suspect and lawyer can communicate (orally and in writing) freely i.e. without someone taking notice of the content of the communication.

¹⁴⁵ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁴⁶?
No.

**What facilities are there to visit a detained suspect?
More specifically:**

013 - Can the lawyer visit his client held at the police station?
Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?
No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?
No.

016 - Can the lawyer visit his client detained in prison¹⁴⁷?
Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?
No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?
No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?
Yes.

If so:

019a - Please specify, who can order this surveillance:

The public prosecutor or the investigating judge may order surveillance measures, but this is usually not done at the very first stage of the investigation (i.e. first consultation between lawyer and suspect). The order should be immediately submitted to the Court which decides on the order after having heard the lawyer.

019b - Please specify, on which grounds surveillance can be ordered:

When it is suspected that the communication between lawyer and suspect (a) is intended to inform the suspect about aspects of the investigation that should, at that stage, remain unknown by the suspect in the interest of the investigation or (b) will be abused to obstruct the investigation. (Art. 50, para 2, CCP)

019c - Please specify, for which period of time surveillance can be ordered:

The period should be limited to the strictly necessary and may not exceed 6 days (Article 50, para 2, CCP).

019d - Please specify, the kind of surveillance that can be ordered:

Access to the suspect can be denied or lawyer and suspect can only speak with each other in the presence of a third person. Because this will limit the effective right to legal assistance, the Court will designate another lawyer for the time being to protect the interest of the suspect.

¹⁴⁶ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹⁴⁷ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

019e - Please specify, any legal remedies provided to the defence in this respect:

The lawyer will be heard by the Court before the Court decides on the order (see Q. 19a). There is no official legal remedy against the decision of the Court. However, a civil action against the State can be a way of appealing the Court's decision.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

See reply question 19a.

020b - Please specify, on which grounds surveillance can be ordered:

See reply question 19b.

020c - Please specify, for which period of time surveillance can be ordered:

See reply question 19c.

020d - Please specify, the kind of surveillance that can be ordered:

Not providing letters or other documents between lawyer and suspect to the suspect. Because this will limit the effective right to legal assistance, the Court will designate another lawyer for the time being to protect the interest of the suspect.

020e - Please specify, any legal remedies provided to the defence in this respect:

See reply question 19e.

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

The lawyer may not be present during questioning by the police. However, he may be present during questioning by the investigating judge (Art. 59a(3) and 186a CCP).

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police -
- b. questioning by the prosecutor -
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private -
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

No.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

A confession made by the suspect, whether or not in the absence of his lawyer, may serve as evidence in his case. However, a suspect cannot be convicted solely on the basis of his own confession. (Articles 339 and 341 CCP.) Furthermore, caution is required with respect to the use of such confessions in particular when the suspect has withdrawn his confession at a later stage.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

- when the offence is punishable with a penalty of at least 12 years
- in other cases, when the victim died or is seriously injured
- in case of a sexual crime that is punishable with a penalty of at least 8 years
- in case of a sexual crime committed to someone who is in one way or another depended of the offender

030 - If so, how many copies of the audio recording are made?

In principle none, unless the judge or prosecutor decides that the defence should be provided with a copy or an expert (e.g. psychologist) is asked to give an opinion on the hearing.

Article 30 CCP contains the right of the suspect to receive a copy of the documents to which he has access. This may also include a copy of the audio recordings.

031 - If so, who is entitled to receive a copy of the audio recording?

See reply question 30.

032 - Is the questioning of the suspect video recorded?

Sometimes.

In cases where the suspect is particularly vulnerable or when special hearing methods are used.

033 - If so, how many copies of the video recording are made?

See reply question 30.

034 - If so, who is entitled to receive a copy of the video recording?

See reply question 30.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

When the suspect is taken in custody, a lawyer will be automatically appointed to him free of charge (Article 40 CCP). If the suspect remains in custody until the trial, the provided legal assistance will be free of charge irrespective of his financial situation.

If the suspect will await his trial in freedom, he can request for legal aid (partially) free of charge.

Whether or not he has to pay a contribution for the legal assistance depends on his financial situation.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁴⁸?

Yes.

This merits test is marginal.

For misdemeanors (minor offences) legal aid free of charge is normally not provided, unless the case contains matters of principle that need reviewing by the court.

037 - Is there a means test¹⁴⁹?

Yes.

See question 35a: means test only applies when the suspect awaits his trial in freedom. When the suspect has an income or property higher than a certain level, legal aid (partially) free of charge will not be provided.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms - Yes.
- b. any rules on what documentation should be provided, please specify rules [...]
- c. other rules, please specify [...] - Yes. An income and property check is done through information available at the tax authorities.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

¹⁴⁸ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁴⁹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

In accordance with Art. 40 CCP a lawyer will be automatically appointed to a suspect who is put in custody. In addition, Art. 44 CCP lists a number of other situations in which the suspect will be informed about the right to legal assistance (partially) free of charge.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

At the latest 6 hours after arrest, a lawyer will be appointed to the suspect. Furthermore, the suspect should be informed about the right to legal assistance free of charge in the following cases:

- at the moment of investigation by the investigating judge
- when the suspect appeals the court's judgment
- when the suspect is requested to appear for hearing
- when the suspect is summoned to appear in court
- when the suspect is informed of his prosecution
- when the suspect is informed that the public prosecutor appeals the Court's judgment
- when the suspect is informed of the day of trial in the Court of Cassation.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally -
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

No.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

According to the general rules on appealing administrative decisions, a decision should be taken within 6 weeks.

046 - When a request is denied, is there a legal remedy?

Yes.

The normal procedures for appealing an administrative decision apply on the basis of the General code on administrative law (Awb).

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] -

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Remuneration is provided through a system of points (reflecting an amount of money). Criminal cases have been categorised and for each category a number of points is determined.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

In general, the number of points determined for a certain case (and the remuneration related to that) is a maximum. However, certain exceptions are possible for complex cases that require a lot of preparation.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

Only when the financial means of the suspect are above a certain threshold, the suspect is obliged to pay a financial contribution.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

180.4 million euro (in 2007)

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

3,68%

055 - What is the size of the population of your country?

16,5 million people

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

A lawyer who wants to provide legal assistance free of charge should prove to have finalised his law studies, to have practical experience in dealing with criminal cases and is obliged to participate in additional training every 2 years. He also has to meet certain requirements with regard to the organisation of his office.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board - Yes.
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁵⁰?

No.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect¹⁵¹ -
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

¹⁵⁰ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁵¹ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

The obligation to provide a translation of the indictment follows from article 6 para 3 ECHR which is direct applicable in the Netherlands and is confirmed by standing jurisprudence.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

Art. 5 of the Regulation on fees in criminal cases:

- German, English, French: € 0,79 per line
- other common European languages: € 1,20 per line
- other European languages: € 1,51 per line
- other common languages: € 1,51 per line
- other languages: € 1,69 per line.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment - Yes.
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

No.

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Several articles in the CCP state the right to an interpreter when questioned by the investigative judge or during trial. A specific regulation provides rules for assistance by an interpreter during questioning by the police.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

The regulation on assistance by interpreters during police questioning states that the suspect should be able (a) to understand the questions and information addressed to him, (b) to give his side of the story in his own words with sufficient degree of detail. If the suspect is only able to respond to questions by 'yes' or 'no', his knowledge of Dutch is considered insufficient and he will be provided with an interpreter.

075 - More specifically, who decides whether interpretation is necessary?

At the police station: police officer decides, but when the suspect indicates the need for interpreter he will in principle get one appointed.

Hearing by investigative judge: investigative judge decides.

In trial: the court decides. NB: The law prohibits continuation of the trial without an interpreter if the suspect needs one.

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

A (flat) starting rate of € 20,23 plus € 43,89 per hour.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

If the interpreter is unable to be present at the police station, interpretation can be provided by telephone.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

There is no specific emergency scheme, but the law (art. 275 CCP) prohibits continuation of the trial without an interpreter, if one is needed. The trial has to be postponed until an interpreter is available.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. Questioning of the suspect by the investigative judge

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Article 274 CCP states that questions and replies will be in writing if the suspect is hearing impaired. If the person concerned cannot read, a special interpreter will be appointed.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

No.

084 - When does the duty to inform the suspect of this right arise?

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁵²

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

When the suspect is arrested and put in custody, he will be informed of the nature and cause of the accusation in writing (Art. 59 CCP).

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

No.

089 - When does the duty to inform the suspect of this right arise for the first time?

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 30 CCP states that upon request the suspect will have access to the file during the investigation. The public prosecutor or investigative judge will decide on the request. Access may be limited in the interest of the investigation, however access to certain documents (e.g. reports of his hearings) cannot be denied to him. Legal remedies against limited access are in place. After finalisation of the investigation the suspect may access all documents.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

No.

094 - When does the duty to inform the suspect of this right arise?

¹⁵² The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 29 CCP states that the suspect is not obliged to reply to questions.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Article 29 CCP states that before the police starts questioning the suspect, he has to be informed of his right to remain silent.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Before any questioning by the police of a person in his capacity of suspect.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

No.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

At the investigative stage: Art. 208 CCP states that the suspect may indicate witnesses or experts he wants to be heard during the investigation by the investigative judge. In addition, when a person suspects that a prosecution against him is in preparation, he may request the investigative judge to carry out investigative measures which can include hearing of witnesses Art. 36a CCP).

At the trial stage: Article 263 CCP states that the suspect has the right to call witnesses.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Article 260 para 4 CCP states that when the indictment is send to the suspect, he shall be informed of the possibility to call witnesses or bring them with him to the court.

105 - When does the duty to inform the suspect of this right arise?

Within [...] hours after arrest

At the moment the indictment is send to the suspect.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing - Yes.
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

No.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Partly.

Usually, the essence of important documents will be translated/explained orally by the lawyer or an interpreter.

111 - The right to information concerning fundamental procedural rights:

No.

111b (*Check any that apply*)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

The person concerned has the possibility to complain against the decision to recognise and execute a financial penalty. Such complaint will be dealt with by the Court. He has the right to legal advice during that procedure.

113 - The right to legal assistance (partially) free of charge:

Partly.

See question 112b . Depending on the financial situation of the person concerned, he can request for legal assistance (partially) free of charge.

114 - The right to interpretation and the right to translation of documents:

Partly.

See question 112b . The essence of the documents will usually be translated/explained orally by the lawyer or an interpreter.

115 - The right to information concerning fundamental procedural rights:

No.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Partly.

See reply to question 112b.

117 - The right to legal assistance (partially) free of charge:

Partly.

See reply to question 113b.

118 - The right to interpretation and the right to translation of documents:

Partly.

See reply to question 114b.

119 - The right to information concerning fundamental procedural rights:

No.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

See reply to question 112b.

121 - The right to legal assistance (partially) free of charge:

Partly.

See reply to question 113b.

122 - The right to interpretation and the right to translation of documents:

Partly

See reply to question 114b.

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge** -
- b. information on access to the file** -
- c. information on the right to remain silent** -
- d. information on the right to call/examine witnesses and experts** -

POLAND

CHAPTER 1 THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁵³

yes

Code of Criminal Procedure (CCP)

Article 73. § 1. The accused while under preliminary detention may communicate with his defence counsel without other persons present, or by mail.

Article 245. § 1. The arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available, and also to talk directly with the latter. The person who made the arrest may reserve the right to be present when such a conversation takes place.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

PPC

Art. 244 § 2. The arrested person shall be informed immediately about the reasons for his arrest and his rights and his explanations shall be heard.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Both orally and in writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

§ 2. An interpreter should be called to actions with the participation of the accused referred to in § 1.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

¹⁵³ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

PPC

Article 83. § 1. The accused himself shall retain the defence counsel; or, before an accused deprived of liberty retains a defence counsel, one may be retained by another person of which the accused shall be promptly informed.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Up to 14 days after detaining the consultation may be monitored. After this term it must be out of hearing of 3rd parties.

PPC

Article 73. § 1. The accused while under preliminary detention may communicate with his defence counsel without other persons present, or by mail.

§ 2. In preparatory proceedings the state prosecutor who issues his permission for such communications may, where particularly justified, demand that he or a person authorised by him shall be present at such meeting.

§ 3. The state prosecutor may also stipulate that the correspondence of the accused with his defence counsel be controlled.

§ 4. The stipulations referred to in § 2 and 3 may not continued or effected after the lapse of 14 days after the date of temporary detention.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁵⁴?

Yes.

The right to consultation is not connected with the time of questioning.

PPC

Article 245. § 1. The arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available, and also to talk directly with the latter. The person who made the arrest may reserve the right to be present when such a conversation takes place.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

Yes.

Permission of the police officer on duty.

¹⁵⁴ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁵⁵?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

Permission of prosecutor, under whose control detainee remains.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

The officer who made the arrest may reserve the right to be present when such a conversation takes place - art. 245 PPC, cited above.

Up to 14 days after detaining the consultation may be monitored by presence of authorised person during communication between detainee and his/her lawyer - art. 73 PPC cited previously.

019b - Please specify, on which grounds surveillance can be ordered:

Art. 73 para. 2 PPC "...where particularly justified..."

019c - Please specify, for which period of time surveillance can be ordered:

Up to 14 days after detention - art. 73 para. 4 PPC cited previously.

019d - Please specify, the kind of surveillance that can be ordered:

The presence of authorised person during the meeting. - art. 73 para. 2 PPC cited previously.

019e - Please specify, any legal remedies provided to the defence in this respect:

There is no any.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

The prosecutor, under whose control the detainee remains - art. 73 para 3 PPC cited previously.

020b - Please specify, on which grounds surveillance can be ordered:

Art. 73 para. 2 PPC "...where particularly justified..."

020c - Please specify, for which period of time surveillance can be ordered:

Up to 14 days after detention - art. 73 para. 4 PPC cited previously.

¹⁵⁵ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020d - Please specify, the kind of surveillance that can be ordered:

Control of correspondence of the accused with his defence counsel. art. 73 para. 3 PPC

020e - Please specify, any legal remedies provided to the defence in this respect:

There is no any.

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

PPC

Art. 84. § 1. The retention of the defence counsel or the appointment of the defence counsel ex officio shall entitle him to act throughout the course of proceedings.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] - Yes. Any authority involved into penal proceedings, as financial control agencies etc.

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

PPC

Article 6. The accused shall have the right to conduct his own defence or to avail himself of the aid of defence counsel; the accused should be advised of this right.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

Promptly after arrest or - if he is not arrested - before first hearing.

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights - Yes.

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

§ 2. An interpreter should be called to actions with the participation of the accused referred to in § 1.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

According to PL penal procedure the agencies responsible for the proceedings shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning and personal experience. (art. 7 PPC). So, such confession is not a priori deemed invalid, but is to be examined as other evidence.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Questioning may be recorded if police, prosecutor or court decides so.

PPC

Art. 147. § 1. In addition, the conduct of recorded actions may be transcribed by means of equipment recording pictures or sound, and the persons participating in the action should be so warned before such equipment is activated.

030 - If so, how many copies of the audio recording are made?

In general there is 1 copy -for court. But other copies might be produced for the parties on their demand.

PPC

Art. 147 § 4. The party has the right to obtain one copy of the sound or picture recording at his expense. This provision shall not apply to the testimonies taken during a closed session or during the preparatory proceedings.

031 - If so, who is entitled to receive a copy of the audio recording?

The parties: suspect, his/her defence counsel, prosecutor, private or subsidiary prosecutor, civil plaintiff.

032 - Is the questioning of the suspect video recorded?

Sometimes.

Polish procedure does not make any distinction between audio and video recordings. Please consider the answers pertaining to audio recording.

033 - If so, how many copies of the video recording are made?

Polish procedure does not make any distinction between audio and video recordings. Please consider the answers pertaining to audio recording.

034 - If so, who is entitled to receive a copy of the video recording?

Polish procedure does not make any distinction between audio and video recordings. Please consider the answers pertaining to audio recording.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

PPC

Art. 78. § 1. The accused who has not retained the defence counsel, may demand that the defence counsel be appointed to him ex officio, if he can duly prove that he is unable to pay the defence costs without prejudice to his and his family's necessary support and maintenance.

§ 2. The court may withdraw an appointment of the defence counsel ex officio if it comes to light that the circumstances leading to the appointment did not exist.

Art. 79. § 1. In criminal proceedings the accused must have the defence counsel if:

- 1) he is a minor,
- 2) he is deaf, mute, or blind,
- 3) there are justifiable grounds to doubt his sanity.

§ 2. The accused must have the defence counsel when the court deems that necessary because of circumstances impeding the defence.

Art. 81. § 1. If the accused in cases specified in Article 78 § 1, Article 79 § 1 and 2, and Article 80, has no defence counsel of his own choice, the president of the court having jurisdiction shall appoint a defence counsel ex officio.

§ 2. Upon a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁵⁶?

Yes.

PPC

Art. 79. § 1. In criminal proceedings the accused must have the defence counsel if:

- 1) he is a minor,
- 2) he is deaf, mute, or blind,
- 3) there are justifiable grounds to doubt his sanity,

§ 2. The accused must have the defence counsel when the court deems that necessary because of circumstances impeding the defence.

Art. 81. § 1. If the accused in cases specified in Article 78 § 1, Article 79 § 1 and 2, and Article 80, has no defence counsel of his own choice, the president of the court having jurisdiction shall appoint a defence counsel ex officio.

¹⁵⁶ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

§ 2. Upon a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.

037 - Is there a means test¹⁵⁷?

Yes.

PPC

Art. 78. § 1. The accused who has not retained the defence counsel, may demand that the defence counsel be appointed to him ex officio, if he can duly prove that he is unable to pay the defence costs without prejudice to his and his family's necessary support and maintenance.

§ 2. The court may withdraw an appointment of the defence counsel ex officio if it comes to light that the circumstances leading to the appointment did not exist.

Art. 81. § 1. If the accused in cases specified in Article 78 § 1, Article 79 § 1 and 2, and Article 80, has no defence counsel of his own choice, the president of the court having jurisdiction shall appoint a defence counsel ex officio.

§ 2. Upon a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms

-

b. any rules on what documentation should be provided, please specify rules [...]

c. other rules, please specify [...]

- Yes. Some courts use standardised application form, but number of courts require reasoned motion without using any form.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

PPC

Art. 80. The accused must have the defence counsel in proceedings before a Circuit Court as a court of first instance if he is charged with a crime or deprived of liberty. In such a case the participation of the defence counsel at the main trial is mandatory; it shall be also mandatory at the appellate and cassation hearing, if the president of the court or the court find it necessary.

Art. 81. § 1. If the accused in cases specified in Article 78 § 1, Article 79 § 1 and 2, and Article 80, has no defence counsel of his own choice, the president of the court having jurisdiction shall appoint a defence counsel ex officio.

§ 2. Upon a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

PPC

¹⁵⁷ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

Article 6. The accused shall have the right to conduct his own defence or to avail himself of the aid of defence counsel; the accused should be advised of this right.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Promptly after arrest, and if not arrested - in the beginning of the first hearing.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally -
- b. In writing -
- c. By a letter of rights - Yes.

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

§ 2. An interpreter should be called to actions with the participation of the accused referred to in § 1.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] Yes. President of the court (being judge) or judge authorised by him/her.

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

No.

046 - When a request is denied, is there a legal remedy?

No.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] -

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board -

e. other authority, please specify authority [...]- Yes. President of the court (being judge) or judge authorised by him/her.

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

These are different remunerations for:

- investigations
 - for defence in front of district court as the 1st instance court
 - for defence in front of circuit court as the 1st 1st instance court
 - for defence in 2nd instance court
 - for defence in front of the Supreme Court
- and for some other detailed procedures.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

- investigations - from 180 - to 1800 PLN
 - for defence in front of district court as the 1st instance court - from 360 - to 2160 PLN
 - for defence in front of circuit court as the 1st 1st instance court- from 600 - to 3600 PLN
 - for defence in 2nd instance- from 420 - to 2520 PLN
 - for defence in front of the Supreme Court - from 600 - to 3600 PN
- and, additionally 20% for every hearing of the cases, if more then one.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

2007 - 60.965.854,00 PLN (Polish zloty)

2008 - 93.842.492,00 PLN (Polish zloty)

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

2007 - 1,29%

2008 - 1,89%

055 - What is the size of the population of your country?

2008 - 38 136 000

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Free legal assistance is rendered by regular attorneys.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] - Yes. PPC

Art. 81 § 2. Upon a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁵⁸?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹⁵⁹ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case - Yes.
- f. legal complexity of the case - Yes.
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] -

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

The costs of obligatory defence are always covered by the state. But in the judgement the court is to decide on the costs matters. It means that the sentenced person might be obliged to reimburse the costs of the trial to the state's budget (including the costs of obligatory defence). Very often, however, the sentenced persons are released this obligation.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

Yes.

PPC

Article 90. § 1. In judicial proceedings, prior to the commencement of the judicial examinations the right to participate in the proceedings may be petitioned by a representative of a social organisation, if there is a need to defend a public interests within the statutory purposes of such an organisation, especially in matters pertaining to the protection of human rights and freedoms.

§ 2. In their petition on this matter the social organisation shall designate the person who is to represent such an organisation, and the representative should file his power of attorney in writing.

§ 3. The court shall admit a representative of a social organisation if it finds that his participation in court proceedings will be in the interests of justice.

Article 91. The representative of a social organisation who has been admitted to participate in court proceedings, may participate in the trial, make statements and submit motions in writing.

¹⁵⁸ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁵⁹ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

PPC

Art. 72 § 3. The order on the presentation, supplementation, or change of charges, the indictment or a decision subject to review, or a decision concluding the proceedings shall be delivered to the accused referred to in § 1 with a translation. If the accused consents, only the translated decision concluding the proceedings may be announced to him, providing it is not subject to review.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

If concern European languages - 25 - 30 PLN per paginam.

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Promptly after arrest and - if without arrest - before first hearing of suspect.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

§ 2. An interpreter should be called to actions with the participation of the accused referred to in § 1.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

As in Yes. + 30% - per hour.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. All procedural actions taken in presence of suspect.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

As for visually impaired, the court, prosecutor or police should arrange specific and appropriate assistance, when it is needed. Although there is no special procedural provision for this, if suspect prove, that the court didn't take into account his/her disability, and this factor influenced the judgement, such judgement shall be cancelled.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

As for hearing impaired, the court, prosecutor or police should arrange specific and appropriate assistance, when it is needed. Although there is no special procedural provision for this, if suspect prove, that the court didn't take into account his/her disability, and this factor influenced the judgement, such judgement shall be cancelled.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

PPC

Art. 72. § 1. If the accused does not have a sufficient command of the Polish language, he has the right to use the aid of an interpreter free of charge.

Art. 244 § 2. The arrested person shall be informed immediately about the reasons for his arrest and his rights and his explanations shall be heard.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Promptly after arrest and - if without arrest - before first hearing of suspect.

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

As aforementioned in Yes. .

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁶⁰

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

PPC

Article 244.para. 2. The arrested person shall be informed immediately about the reasons for his arrest and his rights and his explanations shall be heard.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

PPC

Article 244.para.2 - cited above.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings
Promptly after arrest and - if without arrest - before first hearing of suspect.

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally -

b. in writing -

c. by a letter of rights - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

PPC Art. 72 - cited before

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

PPC

Art. 156. § 1. Parties (...), their defence counsels, attorneys, and legal representatives shall be permitted to examine the files pertaining to the case and to copy them. These records may also be made accessible to other persons with the consent of the president of the court.

§ 2. Upon a motion from the accused or his defence counsel, photocopies of the documents of the case shall be provided at their expense. Such photocopies may provided upon a motion from other parties a(...), their defence counsels, attorneys, or legal representatives, at their expense.

§ 3. The president of the court may on justifiable grounds order certified copies to be made from the files of the case.

¹⁶⁰ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

§ 4. If there is a danger of revealing a state secret, the inspection of files, making certified copies and photocopies shall be done under conditions imposed by the president of the court or the court. Certified copies and photocopies shall not be released unless provided otherwise by law.

§ 5. Unless otherwise provided by law, consent of the person conducting the preparatory proceedings shall be required for the inspection of files of the preparatory proceedings in progress, making copies and photocopies of the same by parties, defence counsels, and legal representatives, and for the issuance of certified copies. Under special circumstances, access to files in the pending preparatory proceedings could be provided to other persons with the consent of the state prosecutor

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Art. 244 para 2 - cited before.

Article 16. § 1. If the agency conducting the proceedings is under obligation to advise the parties to the proceedings of their rights and duties, and fails to do so or misinstructs them, this shall not result in any adverse consequences during the course of the trial to the participant of the proceedings or other persons concerned.

Art. 16 § 2. In addition, the agency conducting the proceedings shall, if necessary, inform the parties to the proceedings of their rights and duties, even in cases when this not explicitly stipulated by law.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
Promptly after arrest and - if without arrest - before first hearing of suspect.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

PPC Art. 72 cited before

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

PPC

Article 175. § 1. The accused is entitled to make statements. He may nevertheless, without giving reasons for so doing, refuse to answer particular questions or refuse to give explanations. He should be advised of this right.

§ 2. The accused present at evidentiary procedural actions is entitled to provide explanations regarding each piece of evidence.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

PPC

Art. 175 para 1 - quoted before

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Promptly after arrest and - if without arrest - before first hearing of suspect.

101 (Check any that apply)

How should the suspect be informed of this right?

a. orally -

b. in writing -

c. by a letter of rights - Yes.

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

PPC

Art. 175 para 1 - quoted before

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

PPC

Art. 167. Evidence shall be taken upon a motion of the parties, (...) or ex officio.

Art. 315. § 1. The suspect and his defence counsel as well as the injured person and his attorney may submit motions to cause certain actions to be performed within the framework of the inquiry.

§ 2. The party which submitted the motion, his counsels and attorneys may not be refused admission to participate in the action if they so demand.

Art. 370. § 1. After a person examined has expressed himself freely, (..), other persons may ask questions in the following order as called by the presiding judge: state prosecutor, subsidiary prosecutor, attorney of the subsidiary prosecutor, private prosecutor, attorney of the private prosecutor, civil plaintiff, attorney of the civil plaintiff, expert, (...), defence counsel, the accused, and members of the panel of judges.

§ 2. A party on whose motion the witness was admitted poses his questions before the remaining parties

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

PPC

Art. 244 para. 2 - quoted previously.

Art. 16 para. 2 - quoted previously.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
Promptly after arrest and - if without arrest - before first hearing of suspect.

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights - Yes.

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

PPC

Art. 72 - quoted previously.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

PORTUGAL

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁶¹

yes

Article 61 nr 1 f) of the Criminal Procedure Code - the suspect/defendant has, in every stage of the procedure, the right to be assisted by a lawyer and when arrested he has the right to communicate in private with him.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Article 61 nr 1 h) of the Criminal Procedure Code - The suspect/defendant has the right to be informed of his rights by the judiciary authority or by the criminal police organ

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

In writing

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Article 92 nr. 2 of the Criminal procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Article 32 nr. 3 of the Portuguese Constitution - Defendants shall possess the right to choose counsel and to be assisted by him in

¹⁶¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

relation to every procedural act. The law shall specify those cases and phases of proceedings in which the assistance of a lawyer shall be mandatory.

Article 62 of the Status of the Portuguese Bar Association determines that the choice of a lawyer is a personal choice and can not be limited in any way

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Article 61 nr. 1 f) of the Criminal Procedure Code - the defendant has, in every stage of the procedure, the right to be assisted by a lawyer and when arrested he has the right to communicate in private with him.

Article 61 nr. 2 of the Criminal Procedure Code - The private communication referred to in f) of the previous number takes place at sight when security reasons determine so but in such conditions that the conversation cannot be heard by the one surveying.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁶²?

Yes.

According to article 61 of the Criminal Procedure Code, the defendant has, in every stage of the procedure, the right to be assisted by a lawyer and when arrested he has the right to communicate in private with him.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁶³?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

¹⁶² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹⁶³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

Article 179 nr. 2 of the Criminal Procedure Code - The apprehension and any other form of control of the written communications between the suspect/defendant and his lawyer is forbidden, and therefore null, except when the judge has founded reasons to believe that the communication is the object or element of a crime.

020b - Please specify, on which grounds surveillance can be ordered:

Article 179 nr. 2 of the Criminal procedure Code - The apprehension and any other form of control of the written communications between the suspect/defendant and his lawyer is forbidden, and therefore null, except when the judge has founded reasons to believe that the communication is the object or element of a crime.

020c - Please specify, for which period of time surveillance can be ordered:

Surveillance is ordered case by case. The decision belongs to the judge.

020d - Please specify, the kind of surveillance that can be ordered:

Article 179 nr. 2 of the Criminal Procedure Code - The apprehension and any other form of control of the written communications between the suspect/defendant and his lawyer is forbidden, and therefore null, except when the judge has founded reasons to believe that the communication is the object or element of a crime.

020e - Please specify, any legal remedies provided to the defence in this respect:

Article 32 nr. 1 of the Portuguese Constitution - Criminal proceedings shall ensure all necessary safeguards for the defence, including the right to appeal.

Article 399 of the Criminal procedure Code – General rule on appeals - It is possible to appeal from any decision except of those specially referred to by law

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Article 32 nr. 3 of the Constitution on Safeguards in criminal proceedings - Defendants shall possess the right to choose counsel and to be assisted by him in

relation to every procedural act. The law shall specify those cases and phases of proceedings in which the assistance of a lawyer shall be mandatory.

Article 61 nr. 1 f) of the Criminal Procedure Code - the defendant has, in every stage of the procedure, the right to be assisted by a lawyer and when arrested he has the right to communicate in private with him.

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Article 58 of the Criminal Procedure Code – Defendant – nr. 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 *(Check any that apply)*

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Article 92 nr. 2 of the Criminal Procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

No.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Article 275 nr. 1 of the Criminal Procedure Code – Inquiry Document – The diligences envisaged regarding evidence collection taken during the investigation (inquérito) are entered into official

document, which can be summarily written, except on those cases in which Public prosecution finds it unnecessary.

Article 296 of the Criminal Procedure Code – Investigation Document - The diligences envisaged, during investigation phase (instrução), regarding evidence collection are documented through recording or are reduced to written official document. the documents presented by accusation and by defense during this stage, as well as any other documents relevant for the cause, and are attached to the Process.

Article 364 of the Criminal procedure Code – Support of documentation – The documentation of the declarations made orally in court audience is, in general, performed by audio record or audio-visual record, without prejudice of the use of other stenographic or stenotypic or other technical forms trustable to assure the total reproduction of the audience. It is applicable the foreseen in nrs. 2 and 3 of article 101.

030 - If so, how many copies of the audio recording are made?

Article 101 of the Criminal procedure Code – Record and transcription - nr. 3 – Whenever a record is done, the clerk delivers, in 48 hours, a copy to any procedural part that requests it and that for the effect supplies the court the necessary technical support

031 - If so, who is entitled to receive a copy of the audio recording?

Article 101 of the Criminal Procedure Code – Record and transcription - nr. 3 – Whenever a record is done, the clerk delivers, in 48 hours, a copy to any procedural part that requests it and that for the effect supplies the court the necessary technical support

032 - Is the questioning of the suspect video recorded?

Sometimes.

Article 275 nr. 1 of the Criminal Procedure Code – Inquiry Document – The diligences envisaged regarding evidence collection taken during the investigation (inquérito) are entered into official document, which can be summarily written, except on those cases in which Public prosecution finds it unnecessary.

Article 296 of the Criminal Procedure Code – Investigation Document - The diligences envisaged, during investigation phase (instrução), regarding evidence collection are documented through recording or are reduced to written official document. the documents presented by accusation and by defense during this stage, as well as any other documents relevant for the cause, and are attached to the Process.

Article 364 of the Criminal procedure Code – Support of documentation – The documentation of the declarations made orally in court audience is, in general, performed by audio record or audio-visual record, without prejudice of the use of other stenographic or stenotypic or other technical forms trustable to assure the total reproduction of the audience. It is applicable the foreseen in nrs. 2 and 3 of article 101.

033 - If so, how many copies of the video recording are made?

Article 101 of the Criminal procedure Code – Record and transcription - nr. 3 – Whenever a record is done, the clerk delivers, in 48 hours, a copy to any procedural part that requests it and that for the effect supplies the court the necessary technical support

034 - If so, who is entitled to receive a copy of the video recording?

Article 101 of the Criminal Procedure Code – Record and transcription - nr. 3 – Whenever a record is done, the clerk delivers, in 48 hours, a copy to any procedural part that requests it and that for the effect supplies the court the necessary technical support

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

The suspect has the right to legal assistance free of charge if he has economical insufficiency.

Article 7 nr. 1 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August – The right to legal protection, in the terms of the present law, is granted to national and European Union citizens, as well as to foreigners and stateless with a valid residence permit issued in one of the European Union Countries, as long as they proof to be in a situation of economical insufficiency

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁶⁴?

No.

037 - Is there a means test¹⁶⁵?

Yes.

Article 8 nr. 1 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August – It is found to be in a situation of economic insufficiency the one that, considering the income, the patrimony and the permanent expenditure of his household, does not possess objective conditions to support the costs of a court procedure.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms - Yes.

b. any rules on what documentation should be provided, please specify rules [...] Yes. Dispatch nr 1085-A/2004, of 31 August specifies the documents to be presented.

Dispatch nr 1085-A/2004, of 31 August specifies the documents to be presented (tax declaration copy, tax liquidation copy, income declaration, VAT copies, document attesting any social benefit)

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

¹⁶⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁶⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Article 58 of the Criminal procedure Code – Defendant - 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Article 92 nr. 2 of the Criminal Procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board -
- e. other authority, please specify authority [...] Yes. The Head of the Social security Services of the area where the requerent lives or has its headquarters.

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

30 days

article 25 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August - The term to conclude the administrative proceeding and to decide on the juridical protection request is of 30 days. This term is continuous and it not suspended during judicial holidays and if it ends on a day in which social security services are closed, it is transferred for the first following weekday day.

046 - When a request is denied, is there a legal remedy?

Yes.

Article 26 nr. 2 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August- The decision on the request for legal aid does not admit reclamation or hierarchical or tutelary appeal, but it may be judicially impugned, on the terms of articles 27 and 28.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -

- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] -

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

Lawyers providing legal assistance are remunerated by the State.

Article 18 nr. 1 of Dispatch nr 10/2008, of 3 January – the forensic professionals should opt, on the moment of appliance, between the following modalities of service regarding access to justice system: a) packs of procedures; b) isolated appointment for procedures; c) packs of prevention scales; d) isolated appointment for prevention scales; e) appointment for juridical consultation.

Payment is different accordingly to the modality chosen

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

Article 25 of Dispatch nr 10/2008, of 3 January – Compensation table for nominations in procedures
1 – Regarding compensation to forensic professionals appointed for packs of procedures or for isolated appointment of procedures it is approved the following table:

- a) In those packs with the composition referred to in paragraph a) of nr. 2 of. Article 18 [pack of 50], the payment of (euro) 640 every two months;
- b) In those packs with the composition referred to in paragraph b) of nr. 2 of. Article 18 [pack of 30], the payment of (euro) 570 every three months;
- c) In those packs with the composition referred to in paragraph c) of nr. 2 of. Article 18 [pack of 20], the payment of (euro) 500 every four months;
- d) In those packs with the composition referred to in paragraph d) of nr. 2 of. Article 18 [pack of 10], the payment of (euro) 350 every six months;
- e) In isolated appointment procedures, referred to in paragraph b) of nr. 1 of. Article 18, the payment of (euro) 120 after final decision without any other possibility of appeal per procedure or (euro) 100 after the nomination of the attorney by the beneficiary

052 - Is the suspect obliged to pay a financial contribution?

Yes.

Yes, however, he only has to pay a contribution if the modality of legal aid request is not the full payment of attorney and other costs of the procedure.

Article 16 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August Legal aid can assume one of the following forms: exemption from the payment of justice tax and other costs of the procedure; appointment and payment of an attorney; payment of officious attorney; phased payment of justice tax and of other costs of the procedure; appointment of attorney and phased payment of other cost of the procedure; phased payment of the officious attorney; appointment of and execution agent.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

National Budget for legal assistance in 2009 - 42.306.500 Euros

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

Legal assistance is foreseen in the National budget, however, it is not differentiated per area (civil, criminal, extra judicial...), and therefore it is impossible to calculate the requested percentage.

055 - What is the size of the population of your country?

10.617.575 habitants (2007 data)

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Yes, only lawyers and trainee lawyers with a valid registration on the Portuguese bar association (ordem dos advogados) can provide legal assistance.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁶⁶?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹⁶⁷ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] - Yes. Article 64 of the Criminal Procedure Code

¹⁶⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁶⁷ Blindness, deafness et cetera.

Mandatory assistance

1 - The assistance of the defender is mandatory:

- a) In the questionings of defendant withheld or imprisoned;
- b) In the instruction debate [debate instrutório] and in court hearing, except when the process cannot give place to the application of imprisonment penalty or security measure such as hospitalization;
- c) In any procedural act, except in act of constitution of defendant (arguido), whenever the defendant is blind, deaf, dumb, illiterate, does not know Portuguese language, under 21 years, or if the question of his capacity or its diminished capacity arises;
- d) In the ordinary or extraordinary appeals;
- e) In the cases to which articles 271º and 294º refer to;
- f) In the trial carried through in the absence of the defendant (arguido);
- g) In all other cases imposed by law.

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

Only in those cases in which the defendant has economical insufficiency.

Article 7 nr. 1 of Law nr. 34/2004, of 29 July, republished by Law nr. 47/2007, of 28 August – The right to legal protection, in the terms of the present law, is granted to national and European Union citizens, as well as to foreigners and stateless with a valid residence permit issued in one of the European Union Countries, as long as they proof to be in a situation of economical insufficiency

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

No.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

067 - Are there any standard fees for legal translation of documents?

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

070 - When does the duty to inform the suspect of this right arise?

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 92 nr. 2 of the Criminal Procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

Article 92^o of the Criminal Procedure Code

Language of the acts and nomination of interpreter

1 - In the procedural acts, as much written as verbal, the language used is Portuguese, otherwise the act is null

2 - When a person, who does not know or does not dominate the Portuguese language, has to intervene in the process, a trustable interpreter is nominated, free of charge, despite the fact that the entity that presides over the act or any of the procedural participants knows the language of that person

3 - The defendant (arguido) can choose, free of charge, a interpreter different than the one foreseen in the previous number to translate the conversations between him and his defender.

4 - The interpreter is subject justice secrecy, in the general terms, and she cannot disclose the conversations between the defendant (arguido) and his defender, in whichever the phase of the process it takes place, duly warned breaking justice secrecy.

5 - The evidence obtained through the violation of nrs. 3 and 4 cannot be used.

6 - An interpreter is also appointed when it becomes necessary to translate a document written in foreigner language and that has not the respective official translation

7 - The interpreter is nominated by the judiciary authority or by criminal policy authority

8 - To the exercise of the interpreter function it is correspondingly applicable articles 153^o and 162^o

075 - More specifically, who decides whether interpretation is necessary?

The judge

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Interpretation fees may vary from 1 UC to 2 UC per service (= 96€ to 192€ per service)

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

The police have a list of interpreters and translators that can be contacted immediately

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

The Courts have a list of interpreters and translators that can contact immediately

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. The interpreter is present in every procedural act.

Article 92 nr. 2 of the Criminal procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Visually impaired persons, as well as other persons with any disability, are granted an interpreter accordingly to the general rule analyzed jointly with article 93. Beside that the rule is that all acts are oral. When a visually impaired person has to read a document, the document must be read to him.

Article 96

Oral form of acts

- 1 - Except for when the law disposes in a different way, all declarations are oral (...)

Article 93

Participation of deaf person, person with hearing disability, or of dumb person

1 - When a deaf person, a person with hearing deficiency or a dumb person has to make declarations, the following rules must be observed:

- a) A trustable gestural language, labial reader or written expression interpreter is appointed to the deaf person or person with a hearing disability, as more adequate to the situation of the interested party;
- b) If the dumb person knows how to write, the questions are formulated verbally, and answering is done in writing. In contrary case and whenever required a trustable interpreter is appointed.

(...)

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Article 93 of the Criminal Procedure Code

Participation of deaf person, person with hearing disability, or of dumb person

1 - When a deaf person, a person with hearing deficiency or a dumb person has to make declarations, the following rules must be observed:

- a) A trustable gestural language, labial reader or written expression interpreter is appointed to the deaf person or person with a hearing disability, as more adequate to the situation of the interested party;
- b) If the dumb person knows how to write, the questions are formulated verbally, and answering is done in writing. In contrary case and whenever required a trustable interpreter is appointed.

2 - The interpreter lack implies the adjournment of the diligence.

3 - The dispositions of the numbers are applicable in all phases of the process and independently of the position of the interested party in the cause.

(...)

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Article 58 of the Criminal Procedure Code – Defendant - 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or

criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

Article 58 of the Criminal Procedure Code – Defendant - 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁶⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 113 of the Criminal procedure Code

General Rules on notifications

9 - The notifications of the defendant (arguido), the assistant and the civil parts can be made to the respective defender or lawyer. The notifications related to the accusation, to the instruction decision (decisão instrutória), the assignment of the trial day and of the sentence reading day, as well as the ones regarding the application of coercive measures and patrimonial guarantees and the ones regarding the deduction of the request of civil compensation must be made to the respective party as well as to the lawyer or appointed defender (...)

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 58 of the Criminal procedure Code – Defendant - 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The suspect is informed of the charge immediately after the accusation has officially been made. Before that he has access to the Process on the terms of article 86 nr. 1

Article 86 of the Criminal Procedure Code

Publicity of the Procedure and justice secrecy

1 – Criminal procedure is public, otherwise it is null, except on those cases foreseen by law.

(...)

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally -

b. in writing - Yes.

c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Article 92 nr. 2 of the Criminal Procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

The interpreter is present in every procedural act.

¹⁶⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 86 of the Criminal Procedure Code

Publicity of the Procedure and justice secrecy

1 – Criminal procedure is public, otherwise it is null, except on those cases foreseen by law.

(...)

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Article 58 of the Criminal Procedure Code– Defendant - nr. 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

(...)

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 58 of the Criminal Procedure Code– Defendant - nr. 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

(...)

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

In all those cases when an interpreter should be appointed.

Article 92 nr. 2 of the Criminal procedure Code - when a person that does not understand Portuguese has to intervene in a procedural act, an interpreter shall be appointed

The interpreter is present in every procedural act.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 61 of the Criminal Procedure Code

Procedural rights and duties

1 – The defendant (arguido) has, in special, at any stage of the procedure and safeguarded the exceptions foreseen by law, the right to:

(...)

d) Not to answer to any questions, made by any entity, on the facts that are imputed to him it and on the content of the declarations that he may give concerning those facts;

(...)

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Article 58 – Defendant - 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

At the moment when he is constituted as a official defendant (legal position of defendant – arguido)

Article 58 of the Criminal Procedure Code – Defendant – nr. 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

101 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Article 58 of the Criminal Procedure Code – Defendant – nr. 2 — The constitution of defendant position is operated through oral or written communication, done to the aimed person by judicial authority or criminal police, informing him that from that moment on he is considered a defendant (arguido) in a criminal procedure and indicating, and explaining if necessary, his procedural obligations and rights.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

No.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

105 - When does the duty to inform the suspect of this right arise?

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** -
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

ROMANIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁶⁹

yes

The right to a lawyer is regulated by the Constitution, the law on judicial organization, as well as in different provisions in the Criminal procedure code (on principles but also on specific sections, detailing the exercise of this rights: hearing, procedure while depriving the defendant of his/her liberty, the trial, etc). Thus, according to art.23 para.8 of the Constitution, any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio. According to the Law on judicial organization no.304/2004, article 15 – The right to defence is guaranteed. Throughout the trial, the parties shall have the right to be represented or, as the case may be, assisted by a defender, chosen or appointed ex officio, according to the law, In the Criminal Procedure Code art.6 stipulates that any party has the right to be assisted by a lawyer throughout the criminal proceedings, judiciary authorities being under the obligation to inform the suspect or the defendant before the first statement is taken, of his/her right to be assisted by a lawyer. Within the cases and conditions provided by the law judicial authorities are obliged to take the necessary measures to grant judicial assistance to the defendant or suspect in case he/she does not have a chosen lawyer.

Other relevant articles from the Criminal Procedure Code

Art.143 para.1 – Hold (first retention) - The hold measure may be taken by the prosecutor or the criminal investigation body against the accused or the defendant, only after hearing him/her in the presence of a lawyer, if there are evidences or solid signs that he/she has committed a deed stipulated by the criminal law.

Art.148 para.1 – The pre/trial arrest of an accused

If there are fulfilled the conditions stipulated in art.143 and there is one of the cases mentioned in art.148 the prosecutor, ex officio or at the proposal of the criminal investigation body, when consider that the arrest of the accused person is necessary for the criminal investigation, only after hearing the person in the presence of a lawyer, make a motivated proposal for taking the measure of a pre/trial detention of that person.

Art.1491 para.1 / The pre/trial arrest of a defendant

The prosecutor, ex officio or at the proposal of the criminal investigation body If there are fulfilled the conditions stipulated in art.143 and there is one of the cases mentioned in art.148 when consider that the arrest of the defendant is necessary for the criminal investigation, only after hearing the person in the presence of a lawyer, make a motivated proposal for taking the measure of a pre/trial detention of that person.

002 - If so, when can this right be effected:

Immediately upon arrest

¹⁶⁹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Art.23 para.8 of the Constitution - any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio

Art.6 of the Criminal procedure code stipulates that any party has the right to be assisted by a lawyer throughout the criminal proceedings, judiciary authorities being under the obligation to inform the suspect or the defendant before the first statement is taken, of his/her right to be assisted by a lawyer. Within the cases and conditions provided by the law judicial authorities are obliged to take the necessary measures to grant judicial assistance to the defendant or suspect in case he/she does not have a chosen lawyer.

Art.171 para.1 of the Criminal procedure code - The accused or the defendant has the right to be assisted by a defender all throughout the criminal investigation and the trial, and the Judicial bodies must inform him/her of this right.

Para.2 Judicial assistance is obligatory when the defendant is a minor, held in a reeducation centre or in a educative medical centre, held ore arrested, even in another criminal case, when that person was obliged to fulfill the security measure of medical treatment or medical hospitalization, even in another criminal case, or when the criminal body or the court considers that the accused or the defendant can not defended himself/herself properly, as well as in other cases provided by the law.

Para.3 - During the trial, judicial assistance is obligatory also in cases when the law provides for the offence committed the penalty of 5 year imprisonment or more or the life imprisonment.

Art. 294 of the Criminal procedure code - In the causes where the appointment of a defender ex officio is obligatory, the president of the instance, at the same time with the settlement of the trial date, takes measures for the appointment of the defender,

The defendant, the other parties and the defenders are entitled to be familiar with the file all throughout the trial.

When the defendant is held, the president of the instance takes measures so that the defendant may exert the right stipulated in the previous paragraph and be able to meet his defender/lawyer .

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

The duty intervenes at the same moment with the disposal of the hold or the arrest of a person, measures that can not be taken without the present of a lawyer.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

There is an obligation under the Romanian Constitution - Art.128 para.2 Romanian citizens belonging to a national minority had the right to talk in their maternal language in front of the court, according to the organic law. (4) Foreign citizens and stateless persons who do not understand or do not speak the Romanian language shall be entitled to take cognizance of all the file papers and proceedings, to speak in court and draw conclusions, by means of an interpreter; in criminal law suits, this right is ensured free of charge.”

Those provisions are detailed within the article 14 of the Law On judicial organisation no.304/2004, re-published in the Official Journal of Romania, Part I, No. 827/13.09.2005, subsequently amended.

Article 14 – (1) Judicial procedure shall be conducted in Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their native language before courts, according to the present law.

(3) In case one or several parties claim to express themselves in their native language, the court has to ensure, free of charge the use of an interpreter or an authorized translator.

(4) In case all the parties demand or agree to express themselves in their native language, the court has to ensure the exercise of that right, as well as the proper administration of justice with the respect of the principles of contradictory, oral and public proceedings.

(5) The requests and the procedural acts shall be drafted only in Romanian.

(6) Debates between parties in their native language shall be recorded, and written down in Romanian. objections made by those concerned regarding the translations and their recording shall be solved by the law court until completion of main hearings for that case, and recorded in the court session conclusion.

(7) The interpreter or the translator shall sign all the drafted acts, for conformity, when these ones were drafted or recorded on the basis of the translation.

More specifically, during the criminal trial, the Criminal procedure code provides the following:

Art.7 of the Criminal procedure code – The language for the criminal trial - The criminal trial is conducted in Romanian.

In front of the judicial bodies it is granted for the parties and for other persons called in trial the use of their maternal language, the procedural acts being fulfilled in Romanian.

Art.8 of the Criminal procedure code

The parties who do not speak or understand the Romanian language are provided, for free, with the possibility to get acquainted with the elements of the case-file, the right to speak and the right to propose conclusions in court, through interpreter.

Art. 128 of the Criminal procedure code / Cases and procedure for using the interpreters

When one of the parties or other person that is to be heard cannot understand or speak Romanian, the criminal investigation body or the instances provide for him/her, free of charge, an interpreter. The interpreter can be designated or chosen by the parties, in this case the interpreter must be an authorized one..

The provisions of the previous paragraph are also enforced accordingly in case some of the writings in the cause record or presented in court are in another language than Romanian.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Art.24 of the Constitution: (1) The right to defense is guaranteed.

(2) All throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed ex officio.

Criminal procedure code, art.171 Para.1The accused or the defendant has the right to be assisted by a defender all throughout the criminal investigation and the trial, and the Judicial bodies must inform him/her of this right.

Para.4 When the judicial assistance is mandatory and the defendant has not chosen a defender, measures are taken for appointing one ex officio.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

There are special provision in the Law on the execution of penalties and measures taken by the judicial authorities during the criminal trial - no.276/2006 , that applies also for persons deprived of their liberty during the trial procedure, as follows:

ART. 45

The right to correspondence

(1) The right of the persons serving detention penalties to correspondence is guaranteed.

(2) Correspondence is confidential and can be opened or seized only within the limits and conditions provided by law.

(3) In order to prevent drugs, toxic products, explosives or other similar items which are forbidden in the penitentiary, from being brought in the penitentiary by mail, correspondence can be opened, without being read, in the presence of the convicted person.

(4) Correspondence may be opened or seized if there are serious clues about committing an offence. The person serving a detention penalty is immediately notified in written of the adoption of these measures while the seized correspondence is deposited in a special file to be kept by the penitentiary's administration.

(5) The opening and seizure of correspondence provided by para. (4) can be done only on the grounds of written reasoned orders issued by the judge delegated for the serving of the detention penalties.

(6) The provisions of paras. (3) and (4) do not apply for the correspondence with the attorney, the human rights nongovernmental organizations, as well as the courts or international organizations the authority of which is accepted or acknowledged by Romania.

(7) The persons serving detention penalties can receive or post letters in their mother tongue, while observing the provisions of paras. (1)-(6).

ART. 46

Measures for ensuring the exercise of the right to petition and correspondence

(1) In order to ensure the exercise of the right to petition and correspondence, the director of the penitentiary is legally bound to take the appropriate measures so that the convict has all the means necessary for this, and mailboxes are installed on the penitentiary premises.

(2) The petitions and the mail are collected by the provider of mail services, to whom access is granted into the penitentiary.

(3) The staff of the provider of mail services is accompanied inside the penitentiary by a person appointed by the director of the penitentiary.

(4) The answers to petitions and the correspondence addressed to the persons serving detention penalties are immediately handed over to the addressee, upon signing of receipt.

(5) The expenditure incurred with the exercise of the right to petition and correspondence is charged to the person serving the detention penalty. If the person does not have the necessary financial means, the expenditure incurred by the exercise of the petition right through requests and complaints addressed to the judicial bodies, international courts or organizations the authority of which is accepted or acknowledged by Romania and those for exercising the right to correspondence with the family, the legal representative and the human rights nongovernmental organizations are charged to the administration of the penitentiary.

ART. 47

The right to phone calls

- (1) The persons serving detention penalties have the right to phone calls from the pre-paid phone boots in the penitentiary. The phone calls are considered confidential and are made under visual surveillance.
- (2) In order to allow the exercise of the right to phone calls, the director of the penitentiary is bound to ensure that pre-paid phone boots are installed on the penitentiary premises.
- (3) The expenditure incurred with the phone calls is charged to the persons serving detention penalties.
- (4) The persons serving detention penalties can make phone calls in their mother tongue while observing the provisions of paras. (1)-(6).

ART. 48

The right to receive visits

- (1) The persons serving detention penalties have the right to receive visits, in purposely-designed places, under the visual surveillance of the penitentiary's administrative staff.
- (2) The visiting persons are duly inspected.
- (3) The duration and frequency of the visits are established by order of the minister of justice, published in the Official Gazette of Romania, Part I.
- (4) The persons serving detention penalties are entitled to receive confidential visits from their legal representative, at any time.
- (5) The persons serving detention penalties can communicate in their mother tongue between them as well as with the visiting persons.

Furthermore, there are also provisions in the Government decision no.1897/2006 for approving the Regulation for applying the Law no.275/2006, as follows:

Art.46 – The visit of the lawyer

The persons who are deprived of their liberty have the right to receive at any time visits of their lawyers. The meeting with the lawyer will be held in special rooms , under the conditions of confidentiality, under visual supervision.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁷⁰?

Yes.

At any time.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁷¹?

Yes.

¹⁷⁰ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

¹⁷¹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

Besides the visual supervision that can be done by the prison or arrest house administration for the necessary reason of the security of the place, there could be another type of supervision of the oral communication, ordered under special conditions, under the provisions of the interception of communications, regulated in the Criminal procedure code art.911- 916.

The interception of communication can be ordered only by the judge, under special exceptional circumstances. If, in case of urgent matter, it is necessary to intercept and there is not time to fulfill the procedure in front of the judge, the prosecutor can order it, for at maximum 48 hours in which the prosecutor must present the reasons and the results of this measure to the judge who must, in 24 hours, confirm the measure or reject it, deleting the registrations done. On this general background, there is a special provision regarding the interception of communications between the lawyer and his client - Art.911 para.6 – the Recording between the lawyer and his client can not be used as means of evidence but only if the recording shows concluding data or information regarding the preparation of the commitment by the lawyer of one of the offences mentioned in para.1 and 2 (offences for which the criminal investigation start ex officio, such as money laundering, drug trafficking, corruption cases, terrorism, etc)

019b - Please specify, on which grounds surveillance can be ordered:

According to art.911para.1 Interception of communication done through telephone or other electronic means of communication must be motivated authorized by the judge, at the request of the prosecutor who run the criminal investigation, in conditions provided by the law, if there are substantial data or signs regarding the preparation or commitment of a crime that is investigated ex officio, and the interception is necessary for discovering the state of facts or because the identification of the participants can not be done through other means or the criminal investigation would be too much prolonged.

Para.2 Interception of communication done through telephone or other electronic means of communication can be authorized in cases for which are investigated offences against national security, provided by the Criminal Code or other special laws, other offences such as drug trafficking, arm trafficking, trafficking in human beings, acts of terrorism, money laundering, forging money, corruption, or other serious offences or for offences committed through electronic means.

019c - Please specify, for which period of time surveillance can be ordered:

The time duration is provided in para.3/5 of the art.911 of the Criminal procedure code- the initial period is at maximum 30 days with the possibility of prolonging it each time of 30 days and the maximum overall duration is of 120 days.

019d - Please specify, the kind of surveillance that can be ordered:

There can be interception of communication done through telephone or other electronic means of communication, as well as of images recording (art.915) and recording of ambient environment, locating and following somebody through GPS (art.914), for the last forms of recording being applicable the general provisions of the interception of communication.

019e - Please specify, any legal remedies provided to the defence in this respect:

The means of evidence regulated in this special section of the Criminal procedure code can be contested, at the request of the prosecutor, parties or ex officio , through a technical expertise (art.916). In addition, according to art. 63,

Any fact that leads to the acknowledgement of the existence or non-existence of a crime, to the identification of the person who committed it and to the discovery of the circumstances necessary for the fair resolution of the cause. is considered evidence. The value of the evidence is not established in advance. The criminal investigation body and the instance appreciate each piece of evidence according to their own convictions, formed after examining all the evidence administrated, with the scope of finding the truth.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

Art. 98 of the Criminal procedure code

The court, at the proposal of the prosecutor's approval, if requested by the interest of the criminal investigation or the trial, may order that any post or transport office retain and deliver the letters, telegrams or any other correspondence, or the objects sent by the defendant, or addressed to him either directly or indirectly.

Measure provided in para.1 can be ordered if there are fulfilled the conditions mentioned in art.911 para.1 and according to the procedure there regulated.

Retaining and delivering of the letters, telegrams or any other correspondence or objects mentioned in para.1 can be ordered, in writing, for urgent cases and with solid reasoning, also by the prosecutor, who is obliged to inform immediately the court.

Retained correspondence and objects that have nothing to do with the cause are returned to the addressee.

020b - Please specify, on which grounds surveillance can be ordered:

See the answer for 019b

020c - Please specify, for which period of time surveillance can be ordered:

See the answer for 019c

020d - Please specify, the kind of surveillance that can be ordered:

See the answer for 019d

020e - Please specify, any legal remedies provided to the defence in this respect:

See the answer for 019d

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Art.6 and art.171 of the Criminal procedure code. Also, art.172 provides as follows:

Art. 172

During the criminal investigation, the accused or defendant's defender/lawyer has the right to assist in the performance of every criminal investigation act and may draw up claims and memos. The absence of the defender does not impede the performance of the criminal investigation act. if there is proof that the

defender has been informed on the date and time of act performance. The notification can be done through telephone, fax, internet or any other means, being specified, after notification, into a verbal note.

When judicial assistance is obligatory, the criminal investigation body will ensure the presence of the defender at the accused or defendant's hearing.

In case the defendant's defendant is present at the performance of a criminal investigation act. this will be mentioned and the act is also signed by the defendant.

The retained or arrested person has the right to get in contact with the defendant, having the confidentiality of their communications.

The defender has the right to complain, under art. 275, if his claims have not been approved; in the situations stipulated In paragraphs 2 and 4 and the prosecutor must solve the complaint In maximum 48 hours.

During the trial. the defender has the right to assist the defendant to exert the trial-related rights of the latter, and in case the defendant is arrested, to get in touch with him.

The defender chosen or appointed ex officio must ensure the judicial assistance of the defendant. In case of non-compliance with this obligation, the criminal investigation body or the instance may inform managing board of the bar, in order to take measures.

022 *(Check any that apply)*

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** -
- d. questioning by other officials, please specify [...]** -

023 *(Check any that apply)*

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** -
- e. other competences, please specify [...]** -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Art.6 Criminal procedure code

The right to defense is guaranteed to the defendant and to the other parties all throughout the criminal trial.

During the criminal trial, the judicial bodies must ensure the parties' full exertion of their rights, under the circumstances stipulated by the law and must administrate the evidence necessary for defense.

The judicial bodies have the obligation to inform , immediately and before taking the first statement of the accused or the defendant, on the deed for which he/she is under criminal investigation, the legal bases for it and to assure for him/her the necessary for exercising the defense.

Any party is entitled to assistance by defender during the criminal trial.

The judicial bodies must inform the defendant, before his first statement, on his right to be assisted by a defender; this will be noted in the hearing official report. Under the circumstances and in the cases stipulated by the law, the judicial bodies must provide judicial assistance for the defendant, if the latter has not chosen a defender..

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings during the first hearing

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing - Yes.
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Art.8 of the Criminal procedure code

The parties who do not speak or understand the Romanian language are provided, for free, with the possibility to get acquainted with the elements of the case-file, the right to speak and the right to propose conclusions in court, through interpreter.

Art. 128 of the Criminal procedure code / Cases and procedure for using the interpreters

When one of the parties or other person that is to be heard cannot understand or speak Romanian, the criminal investigation body or the instances provide for him/her, free of charge, an interpreter. The interpreter can be designated or chosen by the parties, in this case the interpreter must be an authorized one..

The provisions of the previous paragraph are also enforced accordingly in case some of the writings in the cause record or presented in court are in another language than Romanian.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

If the person is not deprived of his/her liberty, the confession made is a statement that has the same value of any other evidence / with the specification that, in case of statements taken from the accused, defendants, the Criminal procedure code impose that (art. 69)

The statements given by the accused/ defendant during the criminal trial may lead to the truth only to the extent to which they are supported/completed by facts and circumstances resulted from all the evidence in the cause.

If the arrested person is heard without his/her lawyer this constitute absolute nullity and the declaration is repealed from the file. According to art.197 , para.2.The provisions regarding the competence according to matter or quality of the person, appealing to court, its composition and the publicity of the session are stipulated under the sanction of nullity. So are the provisions regarding the prosecutor's participation, the defendant's presence and his being assisted by the defender, when they are obligatory under the law, as well as those regarding the performance of the social inquiry when minor perpetrators are involved.

Para.3. The nullity stipulated in paragraph 2 cannot be suspended in any way. It may be claimed at any stage in the trial and is even considered ex officio.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

There is audio recording of the trial sessions in court (art.304 Criminal procedure code). It is stipulated in the law, not yet implemented since the interring into force of those provisions is delayed, to record audio/visually.

During the criminal investigations the Code permit recording the hearing of minors, for specific reasons.

030 - If so, how many copies of the audio recording are made?

At the end of the session each participant can receive, upon request, a copy of the recording (art.304 Criminal procedure code)

031 - If so, who is entitled to receive a copy of the audio recording?

At the end of the session each participant can receive, upon request, a copy of the recording (art.304 Criminal procedure code)

032 - Is the questioning of the suspect video recorded?

No.

033 - If so, how many copies of the video recording are made?

034 - If so, who is entitled to receive a copy of the video recording?

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Art.128 para.4 of the Romanian Constitution - Use of mother tongue and interpreter in court:

(4) Foreign citizens and stateless persons who do not understand or do not speak the Romanian language shall be entitled to take cognizance of all the file papers and proceedings, to speak in court and draw conclusions, by means of an interpreter; in criminal law suits, this right is ensured free of charge.

Art.24 para.2 of the Constitution, all throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed ex officio.

Art.191 para.1 of the Criminal procedure code – Covering the expenses paid in advance by the state when the defendant is convicted

In case of conviction, the defendant must cover the judicial expenses paid in advance by the state, with the exception of the expenses related to translators assigned by judicial organs, according to the law, as well as, for the case in which free judicial assistance was granted.

Art.192 para.6 of the Criminal procedure code – Covering the expenses paid in advance by the state in other cases

The expenses for the payment of the translators assigned by judicial organs, according to the law, as well as, for the case in which free judicial assistance was granted belong, in all cases, to the state duty.

Different provisions of the Law no. 51/1995 on the organisation and the exercise of the lawyers' profession, as was amended at the end of 2008.

Chapter 5 – Judicial assistance, Section I / cases and conditions for granting judicial assistance,

art.68 para.1 - In cases provided by the law, the bars offer judicial assistance on the following forms:

a) in criminal cases, in which the defence is compulsory according to the provisions of the Criminal procedure code.

Art.684 – The lawyer who grant assistance according to the present Chapter had no right to receive from the client or from the person defended any kind of remuneration or any means of recompensation, not even with a title of covering the expenses done in that case.

Finally, in 2008 was concluded a Protocol On the establishment of fees for barristers for the criminal law assistance services, for the delivery of law assistance and/or attorney or for extrajudicial assistance services in the framework of the public law assistance, as well as for the delivery of law assistance services in the framework of the international access to justice in civil matters and international law cooperation in criminal matters, between the Minister of Justice and the National Bar Union of Romania, with the following relevant provisions:

Art. 1. – (1) The present protocol establishes the due amounts and the payment terms for:

.....

b)The fees for the barristers assisting in criminal matters;

c) The fees for the barristers assisting in relation to the international access to justice in civil matters and international law assistance in criminal matters.

(2) The payment of the fees provided under paragraph (1) is made from the funds distinctly set in the Budget of Revenues and Expenses of the Ministry of Justice under the Chapter “Public Order and National Security”, the title “Goods and Services”, the article “Public Law Assistance” for the financing of the public law assistance and the law assistance system.

Chapter III

Fees for delivery of law assistance services in criminal matters

Art. 5. – (1) The fees due to the barristers for giving law assistance to the perpetrator, the culprit, the accused or the convict, when it is mandatory, in case the criminal pursuit authority or the court appreciates that the perpetrator, the accused, the victim, the civil party or the civil liable party could not defend themselves alone, as well as in other cases under law, in which the appointment of an ex officio lawyer is necessary, are the following:

- a) 200 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial;
- b) 300 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial, when at least two persons are considered as perpetrator, culprit or accused in the respective case;
- c) 400 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial when at least five persons are considered as perpetrator, culprit or accused in the respective case;
- d) 100 Lei for the law assistance given to each culprit or accused in case of taking, replacing, revoking, ceasing, extending or maintaining the preventive measures;
- e) 150 Lei for the ex officio law assistance given during the criminal pursuit or the trial to the victim, the civil party or the civil liable party. This fee is granted for each victim, civil party or civil liable party, in case one or several persons are considered as victim, civil party or civil liable party;
- f) 200 Lei for the law assistance given in the extraordinary attack ways;
- g) 100 Lei for the law assistance given in cases of revoking the monitored suspension of the penalty execution, of challenging the execution, of the claims for interruption or postponement of the penalty execution of imprisonment or lifelong imprisonment, replacing the medical treatment, maintaining, replacing or ceasing the measure of medical admittance, as well as in the other cases provided in title III and title IV of the Special Part of the Criminal Proceedings Code.
- h) 100 Lei for law assistance given in cases based on the provisions of the Law no 275/2006 concerning the execution of the penalties and of the measures disposed by the judicial authorities during the criminal trial;
- i) 150 Lei for the law assistance given during the complaint proceedings before the judge against the decisions or the ordinance of the prosecutor on the non indictment, filed according to the provisions of art 2781 of the Criminal Proceedings Code.

(2) The fees due to the barristers for the law assistance provided according to the provisions of par (1) during the criminal pursuit are given only once for the whole duration of the criminal pursuit, but during the trial, separately for each degree of jurisdiction.

(3) The fees provided under par (1) are increased by 100% in the cases, in which the ex officio law assistance is delivered between 20.00 – 08.00 hours or in holidays.

Art. 6. – In case the proxy of the ex officio defense counselor ceases according to art 171 par (5) of the Criminal Proceedings Code, upon appearance of the chosen defense counselor, the prosecutor appointed by ordinance, the court will order in the Protocol of the hearing the payment of the fee due to the ex officio appointed lawyer for the services delivered up to the date, when his/her tasks have ended, taking into account the time required for studying the file, the complexity of the case, the duration and the number of the criminal pursuit acts, in which the lawyer participated or the number of hearings, at which he/she was present before the court. The fee thus established cannot be less than 25% of the amount of the fee due if the law assistance had been finalized.

Chapter IV

Fees for delivering law assistance in matters related to the international access to justice in civil matters and international law cooperation in criminal matters

.....

Section 2

Fees for delivering law assistance services in cases of international law assistance in criminal matters

Art. 8. – (1) The fees due to barristers for the law assistance given to the person subject to extradition, to the searched person or to the convict, when it is mandatory under law, are the following:

- a) 100 Lei for the law assistance given to each person subject to extradition or searched person in case of taking, replacing, revoking, ceasing, extending or maintaining the preventive measures, including in cases of preventive arrest measures in view of extradition;
- b) 320 Lei for each person subject to extradition or searched person during the judicial proceedings of extradition or execution of an European Arrest Warrant;
- c) 320 Lei for each convict during the settlement proceedings of a surrender petition of a foreign citizen from Romania to the state of citizenship;
- d) 320 Lei for each convict during the proceedings of settlement of the surrender petition of a Romanian citizen from a foreign state to Romania;
- e) 170 Lei for the law assistance given during the extraordinary attack ways against the decisions, in which the taking, replacing, revoking, ceasing, extending or maintaining the preventive measures, including in cases of preventive arrest measures in view of extradition have been taken;
- f) 320 Lei for the law assistance given during the extraordinary ways of attack against decisions different from those provided under letter e).

(2) In cases in which taking, replacing, revoking, ceasing, extending or maintaining the preventive measures, including in cases of preventive arrest measure in view of extradition is disposed during the judicial proceedings of settlement of the extradition petition or execution of an European Arrest Warrant, the fees due to the barristers for the provided law assistance according to par (1) letter b) or, as appropriate, par (1) letter c) are granted only once.

(3) The fees due to the barristers for the law assistance provided according to the provisions of par (1) are granted only once for the whole duration of the judicial proceedings of extradition, execution of a European Arrest Warrant or during the settlement proceedings of a surrender petition.

(4) The provisions of art 5 par (3) and art 6 are applied as appropriate.

Chapter V

Common Provisions

Art. 9. – (1) The report drawn up by the lawyer, attesting the effective law assistance for which the fee is due, shall be certified by the judicial authority that orders the payment of the fee or by the management of the authority before which he/she delivered his/her law assistance and/or representation. To the report will be joined the Protocol of the hearing as provided under art 4 par (1), in case of the assistance given in the framework of the public law assistance system.

(2) The report under par (1) is a justifying document, which will be forwarded to the bar by the lawyer within 5 days at most from the certification date, in view of its verification, centralization, noticing and approval of the payment of the fee by the Bar Council.

(3) In case of extrajudicial assistance, the report drawn up by the lawyer, verified and noticed by the coordinator of the law assistance department of the bar, is a justifying document, which shall be forwarded to the Bar Council within the term provided under par (2) in view of the report approval.

(4) After the Bar Council verifying, noticing/approving the reports provided under par (1) and (3), the centralized reports are forwarded to the Economic, Financial and Administrative Department of the District Court to the account of the bars, as provided under law.

(5) The amounts required for payment of the fees established according to the present protocol are transferred by the district courts to the bars during the calendar month, in which the reports have been filed by the bar with the Economic and Financial Department of the District Court, if the reports concerned have been filed up to the 20th of the respective month.

(6) The payment of the fees established according to the present protocol is effected by the bar to the lawyer during the calendar month, in which the amounts required have been transferred by the district court according to par (5).

2.1 Criteria

**Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?
More specifically,**

036 - Is there a merits test¹⁷²?

Yes.

Art.171 para.1 of the Criminal procedure code - The accused or the defendant has the right to be assisted by a defender all throughout the criminal investigation and the trial, and the Judicial bodies must inform him/her of this right.

Para.2 Judicial assistance is obligatory when the defendant is a minor, held in a reeducation centre or in a educative medical centre, held ore arrested, even in another criminal case, when that person was obliged to fulfill the security measure of medical treatment or medical hospitalization, even in another criminal case, or when the criminal body or the court considers that the accused or the defendant can not defended himself/herself properly, as well as in other cases provided by the law.

Para.3 - During the trial, judicial assistance is obligatory also in cases when the law provides for the offence committed the penalty of 5 year imprisonment or more or the life imprisonment.

037 - Is there a means test¹⁷³?

Yes.

Art.171 para.1 of the Criminal procedure code - The accused or the defendant has the right to be assisted by a defender all throughout the criminal investigation and the trial, and the Judicial bodies must inform him/her of this right.

Para.2 Judicial assistance is obligatory when the defendant is a minor, held in a reeducation centre or in a educative medical centre, held ore arrested, even in another criminal case, when that person was obliged to fulfill the security measure of medical treatment or medical hospitalization, even in another criminal case, or when the criminal body or the court considers that the accused or the defendant can not defended himself/herself properly, as well as in other cases provided by the law.

Para.3 - During the trial, judicial assistance is obligatory also in cases when the law provides for the offence committed the penalty of 5 year imprisonment or more or the life imprisonment.

¹⁷² A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁷³ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms -

b. any rules on what documentation should be provided, please specify rules [...] Yes. There is no written rules, the material condition will be presented to the competent body in a form to prove the impossibility to cover the expenses.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

Yes.

Art.6 of the Criminal procedure code stipulates that any party has the right to be assisted by a lawyer throughout the criminal proceedings, judiciary authorities being under the obligation to inform the suspect or the defendant before the first statement is taken, of his/her right to be assisted by a lawyer. Within the cases and conditions provided by the law judicial authorities are obliged to take the necessary measures to grant judicial assistance to the defendant or suspect in case he/she does not have a chosen lawyer.

Art.171 para.1 of the Criminal procedure code - The accused or the defendant has the right to be assisted by a defender all throughout the criminal investigation and the trial, and the Judicial bodies must inform him/her of this right.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Before the first hearing, according to art.6 of the Criminal procedure code.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

Before the first hearing, according to art.6 of the Criminal procedure code.

042 (Check any that apply)

How should the suspect be informed of this right?

a. Orally - Yes.

b. In writing -

c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

The general obligation of the judicial body to inform the person on its right to defense, corroborated to those provisions regulating the right to an interpreter. Art.6/8 Criminal procedure code.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police - Yes.
- b. prosecutor - Yes.
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?
No.

046 - When a request is denied, is there a legal remedy?

Yes.

There is a general obligation for all judicial bodies to assure to the parties, during the entire criminal procedure, the full exercise of their procedural rights .

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer - Yes.
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...]

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per hour.

Protocol On the establishment of fees for barristers for the criminal law assistance services, for the delivery of law assistance and/or attorney or for extrajudicial assistance services in the framework of the public law assistance, as well as for the delivery of law assistance services in the framework of the international access to justice in civil matters and international law cooperation in criminal matters, between the Minister of Justice and the National Bar Union of Romania, with the following relevant provisions:

Art. 5. – (1) The fees due to the barristers for giving law assistance to the perpetrator, the culprit, the accused or the convict, when it is mandatory, in case the criminal pursuit authority or the court appreciates that the perpetrator, the accused, the victim, the civil party or the civil liable party could not defend themselves alone, as well as in other cases under law, in which the appointment of an ex officio lawyer is necessary, are the following:

- j) 200 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial;
- k) 300 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial, when at least two persons are considered as perpetrator, culprit or accused in the respective case;
- l) 400 Lei for each perpetrator, culprit or accused, assisted during the criminal pursuit or during the trial when at least five persons are considered as perpetrator, culprit or accused in the respective case;
- m) 100 Lei for the law assistance given to each culprit or accused in case of taking, replacing, revoking, ceasing, extending or maintaining the preventive measures;
- n) 150 Lei for the ex officio law assistance given during the criminal pursuit or the trial to the victim, the civil party or the civil liable party. This fee is granted for each victim, civil party or civil liable party, in case one or several persons are considered as victim, civil party or civil liable party;
- o) 200 Lei for the law assistance given in the extraordinary attack ways;
- p) 100 Lei for the law assistance given in cases of revoking the monitored suspension of the penalty execution, of challenging the execution, of the claims for interruption or postponement of the penalty execution of imprisonment or lifelong imprisonment, replacing the medical treatment, maintaining, replacing or ceasing the measure of medical admittance, as well as in the other cases provided in title III and title IV of the Special Part of the Criminal Proceedings Code.
- q) 100 Lei for law assistance given in cases based on the provisions of the Law no 275/2006 concerning the execution of the penalties and of the measures disposed by the judicial authorities during the criminal trial;
- r) 150 Lei for the law assistance given during the complaint proceedings before the judge against the decisions or the ordinance of the prosecutor on the non indictment, filed according to the provisions of art 2781 of the Criminal Proceedings Code.

(2) The fees due to the barristers for the law assistance provided according to the provisions of par (1) during the criminal pursuit are given only once for the whole duration of the criminal pursuit, but during the trial, separately for each degree of jurisdiction.

(3) The fees provided under par (1) are increased by 100% in the cases, in which the ex officio law assistance is delivered between 20.00 – 08.00 hours or in holidays.

Art. 6. – In case the proxy of the ex officio defense counselor ceases according to art 171 par (5) of the Criminal Proceedings Code, upon appearance of the chosen defense counselor, the prosecutor appointed by ordinance, the court will order in the Protocol of the hearing the payment of the fee due to the ex officio appointed lawyer for the services delivered up to the date, when his/her tasks have ended, taking into account the time required for studying the file, the complexity of the case, the duration and the number of the criminal pursuit acts, in which the lawyer participated or the number of hearings, at which he/she was present before the court. The fee thus established cannot be less than 25% of the amount of the fee due if the law assistance had been finalized.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

See the provisions presented at previous question.

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

The national currency is LEI. The data available present the amount of 1226500 lei for the year 2007, which represents 0,63% from the total budget allotted to Chapter 61.1. – Public order and national security which was of 1948263000 lei.

For the year 2008, the amount allotted to judicial assistance in criminal matters was of 14510000lei , which represents 0,64% from the total budget allotted to Chapter 61.1. – Public order and national security which was of 2264628000 lei.

For the year 2009 it is provided in the state budget law the amount of 15186000lei, which represents 0,81% from the total budget allotted to Chapter 61.1. – Public order and national security which was of 1882574000 lei.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

The data available is reported to the entire chapter allotted to public order and national security, see the data presentment at Q. no. 053.

055 - What is the size of the population of your country?

The total number of the Romanian population according to the National Institute of Statistics is of 21 504 442.

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

According to art.687 of the Law no. 51/1995 on the organisation and the exercise of the lawyers' profession, while organizing the services of judicial assistance, the bars designate the lawyers to be included in the Register of judicial assistance for granting judicial aid, taking into account the professional experience and the qualification of the lawyer, as well as the nature and the complexity of the case, the other appointments of that lawyer according to the present law, as well as the degree of workload of that person.

Moreover, according to art.6810 of the same law, any lawyer can request to be included on the Register based a specific printed form, but the decision is taken by the Council of the Bar. The council of the Bar can refuse the request or can delete the name of a lawyer from the Register in one of the cases: a disciplinary sanction was applied to the lawyer, the lawyer is accused of committing an offence, if, related to the lawyer, there were notifications regarding the law quality of the assistance granted or the disrespect of the law on the present law

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...] - Yes. The judicial body is obliged by law to check the quality of assistance granted and, if necessary, to take measures accordingly.

For instance, according to art.172 para.8, the defender/lawyer chosen or appointed ex officio must ensure the judicial assistance of the defendant. In case of non-compliance with this obligation, the criminal investigation body or the instance may inform managing board of the bar, in order to take measures.

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁷⁴?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect** - Yes.
- b. mental capacity of the suspect** -
- c. physical handicaps of the suspect¹⁷⁵** -
- d. deprivation of liberty of the suspect** - Yes.
- e. factual complexity of the case** -
- f. legal complexity of the case** - Yes.
- g. severity of the sanction that can be imposed** - Yes.
- h. other circumstances, please specify [...]** - Yes. Art.171 Para.2 and 3 of the Criminal

procedure Code, judicial assistance is obligatory when:

- the defendant is a minor,
- the defendant is held in a reeducation centre or in a educative medical centre,
- the defendant is held
- the defendant is arrested, even in another criminal case,
- the defendant is obliged to fulfill the security measure of medical treatment or medical hospitalization, even in another criminal case,
- the criminal body or the court considers that the accused or the defendant can not defended himself/herself properly, as well as in other cases provided by the law.
- during the trial, judicial assistance is obligatory also in cases when the law provides for the offence committed the penalty of 5 year imprisonment or more or the life imprisonment.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

The state covers always the expenses of the mandatory judicial assistance granted ex officio when the defended didn't choose a lawyer. See the answer to the Q. no.035.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

¹⁷⁴ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁷⁵ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

There is an obligation under the Romanian Constitution - Art.128 para. (4) Foreign citizens and stateless persons who do not understand or do not speak the Romanian language shall be entitled to take cognizance of all the file papers and proceedings, to speak in court and draw conclusions, by means of an interpreter; in criminal law suits, this right is ensured free of charge.”

Those provisions are detailed within the article 14 of the Law On judicial organisation no.304/2004, re-published in the Official Journal of Romania, Part I, No. 827/13.09.2005, subsequently amended.

Article 14 – (1) Judicial procedure shall be conducted in Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their native language before courts, according to the present law.

(3) In case one or several parties claim to express themselves in their native language, the court has to ensure, free of charge the use of an interpreter or an authorized translator.

(4) In case all the parties demand or agree to express themselves in their native language, the court has to ensure the exercise of that right, as well as the proper administration of justice with the respect of the principles of contradictory, oral and public proceedings.

(5) The requests and the procedural acts shall be drafted only in Romanian.

(6) Debates between parties in their native language shall be recorded, and written down in Romanian. objections made by those concerned regarding the translations and their recording shall be solved by the law court until completion of main hearings for that case, and recorded in the court session conclusion.

(7) The interpreter or the translator shall sign all the drafted acts, for conformity, when these ones were drafted or recorded on the basis of the translation.

More specifically, during the criminal trial, the Criminal procedure code provides the following:

Art.7 of the Criminal procedure code – The language for the criminal trial - The criminal trial is conducted in Romanian.

In front of the judicial bodies it is granted for the parties and for other persons called in trial the use of their maternal language, the procedural acts being fulfilled in Romanian.

Art.8 of the Criminal procedure code

The parties who do not speak or understand the Romanian language are provided, for free, with the possibility to get acquainted with the elements of the case-file, the right to speak and the right to propose conclusions in court, through interpreter.

Art. 128 of the Criminal procedure code / Cases and procedure for using the interpreters

When one of the parties or other person that is to be heard cannot understand or speak Romanian, the criminal investigation body or the instances provide for him/her, free of charge, an interpreter. The interpreter can be designated or chosen by the parties, in this case the interpreter must be an authorized one..

The provisions of the previous paragraph are also enforced accordingly in case some of the writings in the cause record or presented in court are in another language than Romanian.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

Common Order no.772 issued in 2009, by the Minister of Justice and the Minister of finance on setting up the tariffs for the payment of the interprets and translators used by the Superior Council of Magistracy, Ministry of Justice, Highs Court of Cassation and Justice Prosecutors Office, National Anticorruption Prosecutors Office, organs of criminal investigation, courts, notaries, lawyers and bailiffs provides the following tariffs:

- a) 23,15 lei per hour or, upon the case, for fractions of an hour, for paying the authorised interprets for translating in / from a foreign language into Romanian,
- b) 33,56 lei/page format A 4, Normal Arial, font Arial, 12, written at a single, line spacing – single, one single space between words, the margins of the page being set up at 2,5 cm up – 2,5 cm down, 2,5 cm left – 2,5 cm right.

The tariffs do not include VAT. To the tariffs mentioned the VAT will be added if this is own according to the law.

3.1.2 Scope of the right to translation

068 *(Check any that apply)*

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment - Yes.
- f. parts of the case file - Yes.
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

During the first hearing, including the hearing of the person in order to art him-her.

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

The general obligation of judicial bodies to assure the proper exercise of the defense rights in conjunction with the obligation to provide a translator or an interpreter. Art.6, 7, 8 Criminal procedure code.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

The same provisions mentioned to Q.no.63 are applicable to the interpreters and translators.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Common Order no.772 issued in 2009, by the Minister of Justice and the Minister of finance on setting up the tariffs for the payment of the interpreters and translators used by the Superior Council of Magistracy, Ministry of Justice, Highs Court of Cassation and Justice Prosecutors Office, National Anticorruption Prosecutors Office, organs of criminal investigation, courts, notaries, lawyers and bailiffs provides the following tariffs:

c) 23,15 lei per hour or, upon the case, for fractions of an hour, for paying the authorised interpreters for translating in / from a foreign language into Romanian,

d) 33,56 lei/page format A 4, Normal Arial, font Arial, 12, written at a single, line spacing – single, one single space between words, the margins of the page being set up at 2,5 cm up – 2,5 cm down, 2,5 cm left – 2,5 cm right.

The tariffs do not include VAT. To the tariffs mentioned the VAT will be added if this is own according to the law.

The Ministry of Justice and Citizens Liberties authorities, according to the law, the interpreters and translators used by the Superior Council of Magistracy, Ministry of Justice, Highs Court of Cassation and Justice Prosecutors Office, National Anticorruption Prosecutors Office, organs of criminal investigation, courts, notaries, lawyers and bailiffs. At the end of February 2009 there were 25.382 translators and interpreters registered for one or more foreign languages.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

The Law no.448 from 2006 promoting and protecting the rights of the persons with handicap, as well as the Common order of the Minister of Labour, family and changes equality, the president of the National Agency for Persons with Handicap, as well as of the Minister of education, research and youth, no.671 from 2007 approving the methodology for authorizing the interpreters for mimico-gestual language and of interpreters for the special language for persons with deafness.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

The Law no.448 from 2006 promoting and protecting the rights of the persons with handicap, as well as the Common order of the Minister of Labour, family and changes equality, the president of the National Agency for Persons with Handicap, as well as of the Minister of education, research and youth, no.671 from 2007 approving the methodology for authorizing the interpreters for mimico-gestual language and of interpreters for the special language for persons with deafness.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

The general obligation of judicial bodies to assure the proper exercise of the defense rights in conjunction with the obligation to provide a translator or an interpret. Art.6, 7, 8 Criminal procedure code.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

At the first hearing, art.6 Criminal procedure code

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

The general obligation of judicial bodies to assure the proper exercise of the defense rights in conjunction with the obligation to provide a translator or an interpret. Art.6, 7, 8 Criminal procedure code.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁷⁶

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

According to art.23 para.8 of the Constitution, any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio.

According to para.3 of art.6 of the Criminal procedure code, the judicial bodies have the obligation to inform , immediately and before taking the first statement of the accused or the defendant, on the deed for which he/she is under criminal investigation, the legal bases for it and to assure for him/her the necessary for exercising the defense.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Under general obligation provided by art.6 para.2 according to which During the criminal trial, the judicial bodies must ensure the parties' full exertion of their rights, under the circumstances stipulated by the law and must administrate the evidence necessary for defense.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings Before the first hearing, art.6 para.3 of the Criminal procedure code.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

The general obligation of judicial bodies to assure the proper exercise of the defense rights in conjunction with the obligation to provide a translator or an interpret. Art.6, 7, 8 Criminal procedure code.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

There is the general provision in the Criminal procedure code on the article regulating the right to defense - Art. 172

During the criminal investigation, the accused or defendant's defender/lawyer has the right to assist in the performance of every criminal investigation act and may draw up claims and memos. The absence of

¹⁷⁶ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

the defender does not impede the performance of the criminal investigation act. if there is proof that the defender has been informed on the date and time of act performance. The notification can be done through telephone, fax, internet or any other means, being specified, after notification, into a verbal note.

When judicial assistance is obligatory, the criminal investigation body will ensure the presence of the defender at the accused or defendant's hearing.

There are, also, different provision of the Criminal procedure code detailing the access to the file, for instance:

Art.159 – the procedure for prolonging the arrest ordered during the criminal investigation phase, the file of the case will be transmitted to the court, together with the proposal of prolonging the arrest, in minimum 5 days before ending the previous period of arrest, and can be consulted by the lawyer of the arrested person.

Art. 250

After issuing the criminal charging, if all necessary investigation acts have been performed, the criminal investigation body calls the defendant and:

- a) informs him/her on the right to familiarize himself/herself with the criminal investigation material, also showing him/her the legal base of the deed committed;
- b) offers him/her the possibility to immediately familiarize himself/herself with the criminal investigation material. If the defendant cannot read, the criminal investigation body reads the material for him/her;
- c) asks him/her, after he has familiarized with the criminal investigation material, if he/she wants to make new claims or supplementary statements.

Art. 251

The criminal investigation body draws up an official report on the enforcement of the provisions stipulated in art. 250, also noting the statements, claims and answers of the defendant.

Art. 252.If the defendant has made new claims regarding the criminal investigation, the criminal investigation body examines them immediately and orders by ordinance the approval or rejection. The investigation body orders by the same ordinance the completion of the criminal investigation, when the defendant's supplementary statements or answers lead to the necessity of completion.

Art. 253

The criminal investigation body is obliged to present the criminal investigation material again, if it has performed new criminal investigation acts or sees that the judicial framing of the deed must be changed.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

This right is part of the right to a proper defense, the legal obligation to assure the right to defense comes from the art.6 of the Criminal procedure code, as follows:

art.6 – Guaranteeing the defense right

para.1 The defense right is guaranteed to the accused, defendant, as well as to any party of the trial during the entire criminal proceedings.

para.2 During the criminal trial, the judicial bodies are obliged to assure the parties the full exertion of their rights, under the circumstances stipulated by the law and must administrate the evidence necessary for defense.

Para.3 The judicial bodies have the obligation to inform , immediately and before taking the first statement of the accused or the defendant, on the deed for which he/she is under criminal investigation, the legal bases for it and to assure for him/her the necessary for exercising the defense.

Para.4. Any party is entitled to assistance by defender during the criminal trial.

Para.5 The judicial bodies must inform the defendant, before his first statement, on his right to be assisted by a defender; this will be noted in the hearing official report. Under the circumstances and in

the cases stipulated by the law, the judicial bodies must provide judicial assistance for the defendant, if the latter has not chosen a defender.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
With the occasion of the first hearing.

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

The provisions related to the obligation to present the result of criminal investigation in conjunction with the obligation to provide documents in a language that the defendant understand. See answers to the Q.no.092 and Q. no.006

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Art. 70 Preliminary questions and clarifications. (part of the Section related to the statements of the accused or the defendant)

Before being heard. the accused or the defendant is asked about his/her name, surname, nickname; date and place of birth, name and surname of parents. citizenship, education, military service, working place, occupation, address, criminal antecedents and other data necessary to determine his/her personal situation.

The deed which form the object of the criminal file is, after this, presented to the accused or the defendant, the legal bases for it, the right to have a defender / lawyer, as well as the right to remain silent, drawing the attention that all that the person might declare can be used against him/her. If the accused or the defendant makes a statement, one will be asked to declare all he/she knows regarding the deed and the accusation brought related to it.

If the accused or the defendant agrees to make a statement, before hearing him/her, the criminal investigation body asks him/her to write himself/herself a statement related to the guilt he/she is made responsible of.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

See the answer to Q. no.098.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
With the occasion of the first hearing. See the answer to Q. no.098.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing - Yes.
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

The provisions related to the obligation to inform about the right to remain silent in conjunction with the obligation to provide documents in a language that the defendant understand. See answers to the Q.no.098 and Q. no.006

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

As part of the general right to defence – art.6 -- see the answer to Q.no 093 and art.171 Criminal procedure code – see the answer to Q.no.003

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Within the general obligation of the judicial body to inform the person about his/her right to defence.
Art.6 Criminal procedure code.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings
at the first hearing.- art.6

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

The general obligation of judicial bodies to assure the proper exercise of the defense rights in conjunction with the obligation to provide a translator or an interpret. Art.6, 7, 8 Criminal procedure code.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

SLOVAK REPUBLIC

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁷⁷

yes

Article 50 paragraph 3 of the Constitution of the Slovak Republic (hereinafter as "the constitution"):

"Everyone charged with a criminal offence shall be entitled to have time and facilities for the preparation of his or her defence and to defend himself or herself in person or through legal assistance."

Section 2 paragraph 9 of the Code on Criminal Procedure (hereinafter as "CCP"):

"Every person subject to criminal prosecution shall have the right to defence."

Section 85 paragraph 6 of CCP:

"A detained person has the right to choose a defending counsel and consult him already in the course of detention without the presence of a third party..."

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Section 34 paragraph 4 of CCP, i.e. general obligation to inform the suspect of his procedural rights:

"The law enforcement authorities and court are obliged always to inform the accused of his rights, including the meaning of confession of criminal offence committed, and to provide him with the possibility to exercise them."

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Section 2 paragraph 20 of CCP:

"If the accused...declares that he does not know the language of the proceedings he is entitled to have an interpreter or translator."

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

¹⁷⁷ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Section 34 paragraph 1 of CCP:

" He (the accused) has the right to choose a defending counsel and consult him also during acts performed by the law enforcement authorities or the court."

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Section 34 paragraph 1 of CCP:

"If the accused is detained, remanded in custody or imprisoned he may consult his defending counsel without the presence of a third party."

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁷⁸?

Yes.

Since the suspect has the right to refuse to give testimony he is implicitly entitled to consult his lawyer first.

But as regards the CCP please see above Section 34 paragraph 1 ("also during the acts performed by the law enforcement authorities or the court") and Section 85 paragraph 6("consult him already in the course of detention...").

Moreover, Section 121 paragraph 2 prescribes the content of information to be orally presented to the accused by police before his interrogation:

"You have the right to request that defending counsel be present during your interrogation and not to give testimony without him being present."

It is not expressly stated though, but -implicitly- the accused has the right to consult his lawyer before being interrogated.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

Yes.

no relevant information. but generally it should be ID and document proving that the lawyer has been given fullpowers to represent the client as a defending counsel in the criminal proceedings.

¹⁷⁸ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

Yes.

no relevant information

016 - Can the lawyer visit his client detained in prison¹⁷⁹?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

no relevant information. But generally it should be ID and document proving that the lawyer has been given fullpowers to represent the client as a defending counsel in the criminal proceedings.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

Yes.

no relevant information

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

Judge or prosecutor in exceptional cases. Order made by prosecutor must be later approved by the judge, otherwise it loses validity and cannot be used as evidence before the court.

It is also important that in accordance with Section 115 paragraph 1 the content of the communication between the accused and his defending counsel, as far as the subject matter of that communication regards the case in which defending counsel represents the accused, cannot be used for the purposes of the criminal proceedings and must be destroyed in prescribed manner without delay.

019b - Please specify, on which grounds surveillance can be ordered:

There are two groups of possible cases of legal surveillance of the telecommunication communication:

1) Section 115 paragraph 1- in case of enlisted criminal offences (corruption, money laundering etc.) if there exists a substantiated assumption that facts relevant for the criminal proceedings might be found out.

2) in case of other wilful criminal offences than those enlisted in paragraph 1, only with the consent of the user of the intercepted telecommunication device.

019c - Please specify, for which period of time surveillance can be ordered:

Under Section 115 paragraph 3 for the maximum period of 6 months. But it can be repeatedly extended for the period of subsequent 2 months by the judge.

019d - Please specify, the kind of surveillance that can be ordered:

interception and recording of telecommunication service and computer service

019e - Please specify, any legal remedies provided to the defence in this respect:

general remedy provided for by the CCP against decisions of the courts and law enforcement authorities

¹⁷⁹ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Section 34 paragraph 1 of CCP.

"(the accused) May request to be questioned in the presence of his defending counsel and that his defending counsel be present during other acts performed within the pre-trial proceedings.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** -
- b. ask questions** -
- c. make remarks** -
- d. consult with his client in private** -
- e. other competences, please specify [...]** - Yes. Section 34 paragraph 1 of CCP: "However, he (the accused) is not entitled to consult during questioning his defending counsel on how to answer the question posed.

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Section 34 paragraph 4, i.e. general obligation to inform the suspect of his procedural rights. Please see above.

and Section 121 paragraph 2 of CCP that prescribes the content of the information that is to be provided for to the accused before he is to be interrogated by police or the court:

"You have the right to choose your defending counsel. If you do not have sufficient means to pay the legal cost of defense you have the right to request that a defending counsel be appointed for you."

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Section 2 paragraph 20 of CCP. Please see above.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

If every legal requirement as stipulated by law is fulfilled in order for the confession to be lawful (made without coercion, accused was duly informed on inter alia his right to be represented by a lawyer etc.) the confession is to be weighed up as an ordinary evidence after taking into consideration other evidence available.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

no specific information available

030 - If so, how many copies of the audio recording are made?

no specific information available

031 - If so, who is entitled to receive a copy of the audio recording?

no specific information available

032 - Is the questioning of the suspect video recorded?

Sometimes.

no specific information available

033 - If so, how many copies of the video recording are made?

no specific information available

034 - If so, who is entitled to receive a copy of the video recording?

no specific information available

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

Article 47 paragraph 2 of the constitution:

"Everyone shall have the right to legal advice from the commencement of proceedings before courts, other public authorities or bodies of public administration, under the conditions laid down by a law."

Section 34 paragraph 3 of CCP:

"The accused who does not have sufficient means in order to pay the legal cost of defence, is entitled to legal defence free of charge or to legal defence for reduced fee; the claim for defence free of charge or for defence for reduced fee shall be proved (to be substantiated) at latest when ruling on the reimbursement of the cost of the criminal proceedings (by the court)."

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁸⁰?

Yes.

Section 37 paragraph 1 of CCP, i.e. the obligatory defense. Section 40 paragraph 1. Aforementioned regards e.g. persons who are (during the pre-trial stage and after being indicted) remanded in custody, imprisoned, placed in health care center for observation etc. That regards also cases when the court or the law enforcement authority considers it necessary that the accused be represented by a lawyer, particularly due to doubts arisen with regard to the ability of the accused to defend himself properly- e.g. due to his blindness.

037 - Is there a means test¹⁸¹?

Yes.

Section 34 paragraph 3- general provisions on status of the accused-:

"The accused who does not have sufficient means to cover the legal cost of defense is entitled to legal defense free of charge or legal defense for reduced fee; the claim for a defense free of charge or defense for reduced fee shall be proved (to be substantiated) by the accused latest when it is being decided on reimbursement of the cost of the criminal proceedings (by the court)."

Section 40 paragraph 2- provisions concerning the "appointed defending counsel":

"The accused who does not have sufficient means to cover the legal cost of defense and who requests for the appointment of a defending counsel shall be accorded" by the court "a defending counsel from (the

¹⁸⁰ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁸¹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

list of) advocates also in case where there are no grounds of the obligatory defense. The fact that he does not have sufficient means shall be proved by the accused."

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms -

b. any rules on what documentation should be provided, please specify rules [...] Yes. Generally, the accused is called to submit the formally approved declaration concerning his property.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Under general obligation to inform him on his procedural rights in accordance with the Section 34 paragraph 4 of CCP and Section 122 of CCP. Please see above.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 *(Check any that apply)*

How should the suspect be informed of this right?

a. Orally - Yes.

b. In writing -

c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Section 2 paragraph 20 of CCP. Please see above.

044 *(Check any that apply)*

Who decides on the request for legal assistance?

a. police -

b. prosecutor -

c. judge - Yes.

d. legal aid board -

e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

no relevant information

046 - When a request is denied, is there a legal remedy?

Yes.

general remedy provided for by the CCP against decisions of the courts.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. A lawyer is chosen from the list of advocates that is maintained by the Slovak Chamber of Advocates.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

no relevant information

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

no relevant information

052 - Is the suspect obliged to pay a financial contribution?

Yes.

Only in cases of the "defense for the reduced fee"

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

no relevant information

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

no relevant information

055 - What is the size of the population of your country?

approx. 5,5 mil.

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Advocates enlisted in the list of advocates that is maintained by the Slovak Chamber of Advocates

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

No.

058 *(Check any that apply)*

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board -
- b. supervision by the bar -
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁸²?

Yes.

060 *(Check any that apply)*

Which circumstances are grounds for obligatory defence?

- a. age of the suspect - Yes.
- b. mental capacity of the suspect - Yes.
- c. physical handicaps of the suspect¹⁸³ - Yes.
- d. deprivation of liberty of the suspect - Yes.
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed - Yes.
- h. other circumstances, please specify [...] - Yes. e.g. extradition cases or if the accused was deprived of the capacity to act with legal consequences or if that capacity was limited, cases against accused who fled etc.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

no relevant information

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

¹⁸² Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁸³ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Section 28 paragraph 1 of CCP:

"If it is necessary to translate minutes concerning testimony or other document a translator shall be appointed by a decree."

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

A declaration made by the accused is a general requirement as stipulated by CCP.

065 - More specifically, who decides whether translation is necessary?

court

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

Yes.

no relevant information

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment - Yes.
- c. the detention order - Yes.
- d. the reasons for detention - Yes.
- e. the final judgment - Yes.
- f. parts of the case file - Yes.
- g. the letter of rights - Yes.
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

071 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

Under general obligation to inform him on his procedural rights in accordance with Section 34 paragraph 4 of CCP.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Article 47 paragraph 4 of the constitution and Section 2 paragraph 20 of CCP. Please see above.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

The only legal requirement is that the accused must declare that he does not understand the language of proceedings.

075 - More specifically, who decides whether interpretation is necessary?

court

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

no relevant information

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

Section 28 paragraph 2 of CCP.

"If the person as stipulated by Section 2 paragraph 20 chooses a language with regard to which no interpreter is enlisted in the list of interpreters or if the case may not be postponed and enlisted interpreters are not available, the law enforcement authority or the court appoints an interpreter for the official language of the state which the said person understands."

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

no relevant information

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

no relevant information

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

no relevant information

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

general obligation to inform him on his procedural rights in accordance with Section 34 paragraph 4.
Please see above

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

Please see Section 2 paragraph 20 of CCP.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁸⁴

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Section 85 paragraph 4:

"The policeman who performed the arrest or to whom the person caught when committing a crime was handed over in accordance with paragraph 2, shall inform that person without delay about grounds for apprehension and he shall question him/her."

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

general obligation to inform suspect on his procedural rights in accordance with Section 34 paragraph 4 of CCP.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings e.g. if the person after being caught when committing a crime is handed over to a policeman. He is then obliged to inform that person as mentioned above.

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Please see Section 2 paragraph 20 of CCP.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

The accused (among other persons listed in CCP) is entitled to access the file under Section 69 paragraph 1 of CCP, except of certain parts thereof (mainly that regard the identity of witnesses etc.) and some other documents, to make notes thereof and also to make copies thereof on his own cost.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

general obligation to inform him on his procedural rights under Section 34 paragraph 4 of CCP.

¹⁸⁴ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

094 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

Please see Section 2 paragraph 20 of CCP.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention -
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 50 paragraph 4 of the constitution:

"Everyone charged with a criminal offence shall have the right to refuse to give testimony; this right may not be denied to that person under any circumstances."

Section 34 paragraph 1 of CCP stipulates basic rights of the accused; among there is to be found also the right to refuse to give testimony.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

general obligation to inform him on his procedural rights under Section 34 paragraph 4 and Section 121 paragraph 2:

"Before the interrogation the accused must be informed: "As the accused you have the right to give testimony or refuse to give testimony..."

100 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Please see Section 2 paragraph 20 of CCP.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Under Section 34 paragraph 1 the accused is entitled in proceeding before the court to examine witnesses whom he alone proposed to be examined or who were with his consent proposed to be examined by his defending counsel and to give them questions.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

general obligation to inform him on his procedural rights under Section 34 paragraph 4 of CCP.

105 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

106 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Please see Section 2 paragraph 20 of CCP.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

General remark to this legal instrument:

Slovak Republic has not implemented this measure yet.

113 - The right to legal assistance (partially) free of charge:

Partly.

General remark to this legal instrument:

Slovak Republic has not implemented this measure yet.

114 - The right to interpretation and the right to translation of documents:

Partly.

General remark to this legal instrument:

Slovak Republic has not implemented this measure yet.

115 - The right to information concerning fundamental procedural rights:

Partly.

115b (Check any that apply)

partly, please specify:

- a. information on the charge - Yes.
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

SLOVENIA

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁸⁵

yes

Art 19, para 3, Constitution of the Republic of Slovenia

"Anyone deprived of his liberty must be immediately informed in his mother tongue, or in a language which he understands, of the reasons for being deprived of his liberty. Within the shortest possible time thereafter, he must also be informed in writing of why he has been deprived of his liberty. He must be instructed immediately that he is not obliged to make any statement, that he has the right to immediate legal representation of his own free choice and that the competent authority must, on his request, notify his relatives or those close to him of the deprivation of his liberty."

and Art 4, para 2 and 3, Criminal Procedure Act

(2) The suspect shall have the right to the services of a counsel from the moment of apprehension onwards.

(3) Any restriction on the freedom of the suspect that involves forced detention shall be considered as apprehension.

and Art 148a, para 1, Criminal Procedure Act

(1) The interrogation of the suspect may only be conducted in the presence of the defence counsel. The interrogation may be attended by the public prosecutor and he shall be properly informed thereon by the police.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Art 4, para 1, Criminal Procedure Act

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

¹⁸⁵ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

Art 4, para 1, Criminal Procedure Act

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Art 4, para 1, Criminal Procedure Act

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Art 12, para 1, Criminal Procedure Act

(1) The accused shall have the right to conduct his own defence or to avail himself of the expert assistance of a defence counsel chosen by himself from among lawyers.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Article 74, Criminal Procedure Act

If the accused is in detention, defence counsel may communicate with him in writing or orally without supervision.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁸⁶?

Yes.

Art 148, para 5, Criminal Procedure Act

¹⁸⁶ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

(5) If the suspect declares that he wants to retain counsel, the interrogation shall be put off until the arrival of the counsel or until the time determined by the police which, nevertheless, may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, shall also be put off until the arrival of the counsel.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁸⁷?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

No.

If so:

019a - Please specify, who can order this surveillance:

019b - Please specify, on which grounds surveillance can be ordered:

019c - Please specify, for which period of time surveillance can be ordered:

019d - Please specify, the kind of surveillance that can be ordered:

019e - Please specify, any legal remedies provided to the defence in this respect:

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

No.

If so:

020a - Please specify, who can order this surveillance:

¹⁸⁷ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020b - Please specify, on which grounds surveillance can be ordered:

020c - Please specify, for which period of time surveillance can be ordered:

020d - Please specify, the kind of surveillance that can be ordered:

020e - Please specify, any legal remedies provided to the defence in this respect:

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Art 12, para 1, Criminal Procedure Act

(1) The accused shall have the right to conduct his own defence or to avail himself of the expert assistance of a defence counsel chosen by himself from among lawyers.

and Art 67, para 1 and 2, Criminal Procedure Act

(1) The accused may have legal counsel at any stage of the proceedings.

(2) Prior to the first interrogation, the accused shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police** - Yes.
- b. questioning by the prosecutor** - Yes.
- c. questioning by the investigating judge** - Yes.
- d. questioning by other officials, please specify [...]** -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene** - Yes.
- b. ask questions** - Yes.
- c. make remarks** - Yes.
- d. consult with his client in private** - Yes.
- e. other competences, please specify [...]** -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

Art 4, para 1, Criminal Procedure Act

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Art 67, para 2, Criminal Procedure Act

(2) Prior to the first interrogation, the accused shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation.

Art 148, para 4, Criminal Procedure Act

(4) When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

Art 4, para 1, Criminal Procedure Act

(1) Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Art 67, para 2, Criminal Procedure Act

(2) Prior to the first interrogation, the accused shall be instructed that he is entitled to retain defence counsel and that defence counsel may attend his interrogation.

Art 148, para 4, Criminal Procedure Act

(4) When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Record of the interrogation of the suspect, made in the absence of his lawyer, can be used as an evidence in court if the suspect has waived his right to the lawyer. Such a waiver must be stated in the record of interrogation. In all other cases the record of the interrogation can not be used as an evidence if the interrogation was made in the absence of the lawyer.

Art 148.a, para 1 and 3, Criminal Procedure Act

(1) The interrogation of the suspect may only be conducted in the presence of the defence counsel. The interrogation may be attended by the public prosecutor and he shall be properly informed thereon by the police.

(3) If the suspect has not been informed of his rights under the fourth paragraph of the preceding Article [Art 148, para 4: When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.], or the instruction and the statement of the suspect in respect of his right to defence counsel have not been noted down in the record, or the suspect was interrogated without his counsel being present, or the interrogation was conducted contrary to the provisions of the eighth paragraph of Article 227 of this Act [Art 227, para 8: Force, threats or any similar means of extorting a statement or confession from the accused must not be used], the court may not base its decision on the statement of the suspect.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Any questioning can be recorded subject to a prior notification of the suspect.

Art 148, para 6, Criminal Procedure Act

(6) If the suspect states that he does not want to retain counsel or the counsel does not arrive until the time determined by the police, an official note of the statement of the suspect shall be made. The note shall include the legal instruction given, the statement of the suspect and, in the event that the suspect wants to declare himself on the offence, the essence of his statement and comments thereon. The official note shall be read to the suspect and a copy thereof shall be delivered to him; the suspect shall acknowledge the receipt of the copy by his signature. The statement of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.

Art 148a, para 2, Criminal Procedure Act

(2) The interrogation of the suspect shall be conducted by the police according to the provisions of this Act applying to the interrogation of the accused (Articles 227 to 233). The record of the interrogation shall be drawn up according to the provisions of Articles 79 to 82 of this Act. This record may be used as evidence in criminal proceedings. The interrogation of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.

030 - If so, how many copies of the audio recording are made?

n/a

031 - If so, who is entitled to receive a copy of the audio recording?

Recording is a part of the case file, for examination and copying of a case file a person requires a legitimate interest.

Art 128, para 1, Criminal Procedure Act

(1) Examination and copying of individual criminal case files shall be permitted to anyone having a legitimate interest therein.

Art 128, para 5, Criminal Procedure Act

(5) The accused shall have the right to examine and copy files and to inspect items of evidence.

032 - Is the questioning of the suspect video recorded?

Sometimes.

see answer to question 029

033 - If so, how many copies of the video recording are made?

see answer to question 030

034 - If so, who is entitled to receive a copy of the video recording?

see answer to question 031

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

In cases of obligatory defence.

Art 70, Criminal Procedure Act

(1) If the accused is deaf, dumb or otherwise incapable of defending himself successfully, or if criminal proceedings are conducted against the accused for a criminal offence punishable by thirty years of imprisonment, or if he is brought before an investigating judge according to Article 157 of this Act, the accused shall have defence counsel from the very first interrogation.

(2) The accused shall be bound to have defence counsel in proceedings under Article 204.a of this Act for as long as he is subject to a detention order.

(3) The accused shall be bound to have defence counsel at the time the charge sheet is served on him if the law prescribes a punishment of eight years imprisonment or a more severe punishment for the criminal offence he is charged with.

(4) If in the cases of mandatory defence referred to in the preceding paragraphs the accused fails to retain defence counsel by himself, the president of the court shall appoint defence counsel ex officio for the further course of criminal proceedings until the finality of the judgement; if the accused has been sentenced to thirty years in prison or if he is deaf, dumb or otherwise incapable of defending himself successfully, he shall have defence counsel appointed for him for the extraordinary judicial review as well. If defence counsel is appointed ex officio after the charge sheet has been filed, the accused shall be informed thereof at the time the charge sheet is served on him. If in the case where defence is mandatory the accused remains without defence counsel and fails to retain one by himself, the president of the court before which the proceedings are conducted shall appoint defence counsel ex officio.

(5) Only a lawyer may be appointed as defence counsel.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁸⁸?

No.

037 - Is there a means test¹⁸⁹?

Yes.

Art 13, Legal Aid Act

(1) Legal aid shall be granted to persons that, given their financial position and the financial position of their families, are not able to meet the costs of the judicial proceeding or costs of legal aid without causing harm to their social position and the social position of their families.

¹⁸⁸ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁸⁹ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

(2) It shall be deemed that the social position of the applicant and his or her family is put at risk by the costs of the judicial proceeding or costs of legal aid if the monthly income of the applicant (personal income) or average monthly income per family member (personal family income) does not exceed the double amount of the minimum income laid down in the act governing the social-security services (hereinafter referred to as: minimum income).

038 *(Check any that apply)*

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. **standardised application forms** - Yes.
- b. **any rules on what documentation should be provided, please specify rules [...]**
- c. **other rules, please specify [...]** -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

No.

041 - When does the duty to inform the suspect of this right arise?

042 *(Check any that apply)*

How should the suspect be informed of this right?

- a. **Orally** -
- b. **In writing** -
- c. **By a letter of rights** -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

044 *(Check any that apply)*

Who decides on the request for legal assistance?

- a. **police** -
- b. **prosecutor** -
- c. **judge** -
- d. **legal aid board** -
- e. **other authority, please specify authority [...]** Yes. Legal Services at all District Courts.

Art 31.a Legal Aid Act

Applications for legal aid approval shall be decided upon by the Legal Aid Authority operating at the court based in the region where the applicant has permanent or temporary residence or where his or her head office is based, to wit:

- the relevant district court in matters for which courts of general jurisdiction are competent;
- labour and social courts in matters involving individual and collective labour and social disputes;
- the relevant administrative court in matters involving administrative disputes; and

- that court from the aforesaid courts whose jurisdiction covers constitutional action, petitions for assessment of constitutionality and lawfulness, disputes before international courts, and out-of-court settlement of disputes.

If the applicant, as an alien or stateless person that pursuant to this Act can be an eligible person – does not have permanent or temporary residence in the Republic of Slovenia, the decision on the application referred to in the preceding paragraph shall be adopted by the Legal Aid Authority operating at one of the courts selected by the applicant.

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

1 month according to the General Administrative Procedure Act.

Art 34, para 2, Legal Aid Act

If not otherwise determined by this Act, the Legal Aid Authority shall act in accordance with the act governing the general administrative procedure.

In case of urgency Art 36 applies -

Art 36, Legal Aid Act

If, due to the deciding on the application for legal aid or due to the procedure for preparing and filing the application, the applicant would miss the deadline for a legal act and therefore would forfeit the right to perform this act, the Legal Aid Authority shall, notwithstanding the provisions of this Act governing the conditions and procedure for legal aid approval, immediately approve legal aid for the particular act indispensable for the applicant to avoid the consequences (emergency legal aid).

The applicant may also put forward an application for deciding in the cases referred to in the preceding paragraph orally in the form of a record taken by the county court, where the applicant must submit documents to prove the emergence of the conditions referred to in the preceding paragraph (e.g., day of service of the ruling in which the deadline for filing an appeal is specified).

An applicant that has received approval for legal aid in the manner laid down in the first paragraph of this article must immediately and no later than within eight days of the approval for legal aid prove the fulfilment of all conditions required pursuant to this Act.

If the approval referred to in the first paragraph is not founded, or if the applicant fails to act in accordance with the preceding paragraph, the provisions of this Act governing unjustifiably received legal aid shall apply.

046 - When a request is denied, is there a legal remedy?

Yes.

Legal remedy against decision on denial of request for free legal assistance presents administrative dispute according to the Administrative Dispute Act.

Art 34, para 5, Legal Aid Act

An appeal against decisions and orders issued by the Legal Aid Authority shall not be possible; instead, an administrative dispute may be instituted. An administrative dispute appeal may also be filed by the Attorney General. Pursuant to this Act, administrative dispute matters shall be deemed to be urgent.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect - Yes.
- b. specialisation of the lawyer -
- c. availability of the lawyer - Yes.
- d. other factors, please specify [...] -

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...] - Yes. see answer to question 044e

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

Per case.

/

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

Yes.

unclear question

052 - Is the suspect obliged to pay a financial contribution?

No.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

/

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

It is not specified in the general budget.

055 - What is the size of the population of your country?

2.036.435

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

No.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board -

b. supervision by the bar -

c. other methods of quality control, please specify [...] - Yes. Art 72, para 4, Criminal Procedure Act

(4) The president of the court may upon petition by or with the consent of the accused withdraw appointed defence counsel if the latter does not discharge his duty properly, and appoint a new one in his stead. The withdrawal of defence counsel shall be reported to the Bar.

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁹⁰?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect - Yes.

b. mental capacity of the suspect - Yes.

c. physical handicaps of the suspect¹⁹¹ - Yes.

d. deprivation of liberty of the suspect - Yes.

e. factual complexity of the case -

f. legal complexity of the case -

g. severity of the sanction that can be imposed - Yes.

h. other circumstances, please specify [...] - Yes. Art 70, para 1, 2 and 3, Criminal Procedure Act

(1) If the accused is deaf, dumb or otherwise incapable of defending himself successfully, or if criminal proceedings are conducted against the accused for a criminal offence punishable by thirty years of imprisonment, or if he is brought before an investigating judge according to Article 157 of this Act, the accused shall have defence counsel from the very first interrogation.

(2) The accused shall be bound to have defence counsel in proceedings under Article 204.a of this Act for as long as he is subject to a detention order.

(3) The accused shall be bound to have defence counsel at the time the charge sheet is served on him if the law prescribes a punishment of eight years imprisonment or a more severe punishment for the criminal offence he is charged with.

Article 454, Criminal Procedure Act

(1) A minor may have defence counsel from the outset of the preparatory procedure.

(2) A minor shall have defence counsel from the beginning of the preparatory procedure if the criminal offence with which he is charged is punishable by more than three years imprisonment; in case of offences subject to less severe punishment he shall have defence counsel if so determined by the juvenile judge.

¹⁹⁰ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁹¹ Blindness, deafness et cetera.

(3) If in instances from the preceding paragraphs a minor does not retain defence counsel, or the latter has not been retained by his legal representative or relatives, the juvenile judge shall appoint one ex officio.

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

Art 97, para 1, Criminal Procedure Act

(1) The fees and necessary expenses of defence counsel and attorneys who have been retained by the private prosecutor or the injured party shall be paid by the person who has retained them regardless of the court decision as to who is liable for the costs, except where under the provisions of this Act the fees and the necessary expenses of defence counsel are to be charged to the budget. If defence counsel has been appointed and the payment of the fees and necessary expenses of defence counsel would imperil the sustenance of the accused or of persons whom he is bound to support, these expenses shall be reimbursed from budgetary funds. The same shall apply to cases where the attorney has been appointed for an injured party acting as prosecutor.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Art 8, Criminal Procedure Act

(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The fact that they have been informed of their right, as well as their statements in this regard, should be entered in the record.

(3) The translation shall be done by a court interpreter.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

No.

065 - More specifically, who decides whether translation is necessary?

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge - Yes.
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings
In all phases of the criminal procedure.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

No.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Art 8, Criminal Procedure Act

(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The fact that they have been informed of their right, as well as their statements in this regard, should be entered in the record.

(3) The translation shall be done by a court interpreter.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

No.

075 - More specifically, who decides whether interpretation is necessary?

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

No.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

No.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

Art 8, Criminal Procedure Act

(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The fact that they have been informed of their right, as well as their statements in this regard, should be entered in the record.

(3) The translation shall be done by a court interpreter.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

In all phases of the criminal procedure.

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

No.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge¹⁹²

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Article 5, Criminal Procedure Act

(1) The accused shall at the first interrogation be informed of the offence he is charged with and of the grounds on which the charge has been brought against him.

(2) The accused shall be enabled to make a statement on all the facts and evidence which incriminate him and to state all facts and evidence in his favour.

(3) The accused shall not be obliged to plead his case or to answer any questions; if he pleads his case he shall not be obliged to incriminate himself or his close relatives, nor to confess guilt.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Article 5, Criminal Procedure Act

(1) The accused shall at the first interrogation be informed of the offence he is charged with and of the grounds on which the charge has been brought against him.

(2) The accused shall be enabled to make a statement on all the facts and evidence which incriminate him and to state all facts and evidence in his favour.

(3) The accused shall not be obliged to plead his case or to answer any questions; if he pleads his case he shall not be obliged to incriminate himself or his close relatives, nor to confess guilt.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Also promptly after arrest:

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

¹⁹² The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

Article 148, paragraph 4, Criminal Procedure Act

When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

090 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Article 148, paragraph 4, Criminal Procedure Act

When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

Article 128, paragraph 5, Criminal Procedure Act

The accused shall have the right to examine and copy files and to inspect items of evidence.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

Article 14, Criminal Procedure Act

The accused or other participants in the procedure who, out of ignorance, might omit to perform an act or to exercise their rights in the course of proceedings shall be instructed by the court as to the rights to which they are entitled under this Act and of the consequences of failure to perform such an act.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

At all stages of the criminal procedure.

Article 14, Criminal Procedure Act

The accused or other participants in the procedure who, out of ignorance, might omit to perform an act or to exercise their rights in the course of proceedings shall be instructed by the court as to the rights to which they are entitled under this Act and of the consequences of failure to perform such an act.

095 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

No.

097 *(Check any that apply)*

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment - Yes.
- b. the detention order - Yes.
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file - Yes.
- f. other documents, please specify [...] - Yes. Article 128, paragraph 5, Criminal Procedure Act

The accused shall have the right to examine and copy files and to inspect items of evidence.

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Article 5, paragraph 3, Criminal Procedure Act

The accused shall not be obliged to plead his case or to answer any questions; if he pleads his case he shall not be obliged to incriminate himself or his close relatives, nor to confess guilt.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

Article 148, paragraph 4, Criminal Procedure Act

When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

101 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Article 4, paragraph 1, Criminal Procedure Act

Any arrested person shall be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Article 5, paragraph 2, Criminal Procedure Act

The accused shall be enabled to make a statement on all the facts and evidence which incriminate him and to state all facts and evidence in his favour.

Article 16, paragraph 3, Criminal Procedure Act

The accused shall have the right to state facts and provide evidence in his favour.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

General right deriving from Article 14, Criminal Procedure Act

The accused or other participants in the procedure who, out of ignorance, might omit to perform an act or to exercise their rights in the course of proceedings shall be instructed by the court as to the rights to which they are entitled under this Act and of the consequences of failure to perform such an act.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

Article 14, Criminal Procedure Act

The accused or other participants in the procedure who, out of ignorance, might omit to perform an act or to exercise their rights in the course of proceedings shall be instructed by the court as to the rights to which they are entitled under this Act and of the consequences of failure to perform such an act.

106 *(Check any that apply)*

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Article 8 paragraph 2, Criminal Procedure Act

(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.

(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The fact that they have been informed of their right, as well as their statements in this regard, should be entered in the record.

(3) The translation shall be done by a court interpreter.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

No.

113 - The right to legal assistance (partially) free of charge:

No.

114 - The right to interpretation and the right to translation of documents:

No.

115 - The right to information concerning fundamental procedural rights:

No.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

No.

117 - The right to legal assistance (partially) free of charge:

No.

118 - The right to interpretation and the right to translation of documents:

No.

119 - The right to information concerning fundamental procedural rights:

No.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

No.

121 - The right to legal assistance (partially) free of charge:

No.

122 - The right to interpretation and the right to translation of documents:

No.

123 - The right to information concerning fundamental procedural rights:

No.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

SPAIN

CHAPTER 1 THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?¹⁹³

yes

Constitution of Spain (CE) art. 17.3 Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law. Art. 24 All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.

Likewise, all have the right to the ordinary judge predetermined by law; to defense and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defense; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent.

Spanish Criminal Procedural Law (LECr) art. 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

002 - If so, when can this right be effected:

Immediately upon arrest

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

Art. 520.2 c) Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated.

004 - If so, when does the duty to inform the suspect of this right arise?

Promptly after arrest

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

art. 520.2 e) Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights,

¹⁹³ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

specially of the following: e) Right to have the free assistance of an interpreter when he/she is a foreigner and does not understand nor speak Spanish.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

Art. 520.2 c) Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated.

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

LECr art. 520.6 c)The assistance of a lawyer shall include:

c) secret interview with the suspect after any proceeding he/she is involved in.

012 - Consultation (in person or by telephone) is possible before questioning by the police¹⁹⁴?

Yes.

LECr 520.2 c)

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated.

¹⁹⁴ The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

014 - If so, does the lawyer need permission to visit his client held at the police station?

No.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison¹⁹⁵?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

No.

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

No.

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

Organic Law 1/1979 General Prison regime art. 51.2 Communications with the lawyer will not be suspended or tapped, unless a judge decides otherwise and in cases of terrorism. Art. 51.6 The Director of the prison may order the surveillance, communicating this decision to the judge.

019b - Please specify, on which grounds surveillance can be ordered:

See answer to 19a

019c - Please specify, for which period of time surveillance can be ordered:

The law does not specify.

019d - Please specify, the kind of surveillance that can be ordered:

The law does not specify.

019e - Please specify, any legal remedies provided to the defence in this respect:

The law does not specify.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

See answer to 19a

¹⁹⁵ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

020b - Please specify, on which grounds surveillance can be ordered:

See answer to 19a

020c - Please specify, for which period of time surveillance can be ordered:

The law does not specify.

020d - Please specify, the kind of surveillance that can be ordered:

The law does not specify.

020e - Please specify, any legal remedies provided to the defence in this respect:

The law does not specify.

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

CE art. 17.3 3. Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law. LECr art 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge - Yes.
- d. questioning by other officials, please specify [...] -

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene - Yes.
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

Promptly after arrest

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

CE art. 17.3 3. Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law. LECr art 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

No.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

This is not covered by our legislation. However, such recordings would be valid if accepted by all parties or authorised by the judicial authority.

030 - If so, how many copies of the audio recording are made?

Every party would have a copy.

031 - If so, who is entitled to receive a copy of the audio recording?

Every party would have a copy.

032 - Is the questioning of the suspect video recorded?

Sometimes.

See answer to 29b

033 - If so, how many copies of the video recording are made?

See answer to 30

034 - If so, who is entitled to receive a copy of the video recording?

See answer to 31

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

CE 119 Justice shall be free when thus provided for by law, and shall in any case be so in respect of those who have insufficient means to sue in court.

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test¹⁹⁶?

Yes.

Free Legal Assistance Law 1/1996 Art. 2.1 and 3 . The requirement for granting aid are that income from all sources and per family unit is not more than double the national minimum wage applying at the time the application is made.

037 - Is there a means test¹⁹⁷?

Yes.

See answer to question 36

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

a. standardised application forms -

b. any rules on what documentation should be provided, please specify rules [...] Yes. Free Legal Assistance Law 1/1996 Art. 17 To verify the accuracy and veracity of the economic data provided by the applicant of legal aid, the Committee can make all the inquiries and obtain the necessary information, specially the Committee can request a verification of the tax data by the Tax Administration. The Committee can also hear the other party of the lawsuit, if known, and it is considered that they can provide some data to know the applicant's economic situation.

c. other rules, please specify [...] -

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

¹⁹⁶ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

¹⁹⁷ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

Art 520.2 ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

c) Right to designate a lawyer and to require his/her presence at police and judicial declaration proceedings and at identity check-up. Should the suspect not designate a lawyer, a State-appointed lawyer shall be designated.

041 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights -

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

Art 520.2 ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

e) Right to have the free assistance of an interpreter when he/she is a foreigner and does not understand nor speak Spanish.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge -
- d. legal aid board - Yes.
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

Free Legal Assistance Law 1/1996 Art. 17 The Committee, having checked the referred data, will decide, in a maximum period of 30 days from the moment they receive the application, weather or not to grant applicants free legal aid.

046 - When a request is denied, is there a legal remedy?

Yes.

Free Legal Assistance Law 1/1996 Art. 20 The ones entitled to free legal aid may appeal against the firm decision granting or denying the right to free legal assistance.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -
- d. other factors, please specify [...] - Yes. Free Legal Assistance Law 1/1996 Art. 24 The Bar Associations will establish an objective and fair distribution system of shifts.

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge -
- c. lawyer's professional organisation (bar) - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Free Legal Assistance Law 1/1996 Art. 40 There will be compensation units, depending on the type of proceeding.

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

Free Legal Assistance Law 1/1996 Art. 36.2 Should the person entitled to free legal aid be sentenced to pay the costs of the trial and improve his/her economic situation within the next three years, he/she will be obliged to pay the costs of his/her defense and the ones of the other party.

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

30.90 million Euro

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

1.61 million Euro

055 - What is the size of the population of your country?

46,157,822

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

Order of 3rd June 1997 on the establishing of minimum general training and specialization requirements to provide free legal assistance services: having usual residence and open law firm in the Bar Association territory, three proved years of actual practicing, to have the Legal Practice School certificate.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

- a. supervision by the government/legal aid board - Yes.
- b. supervision by the bar - Yes.
- c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence¹⁹⁸?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

- a. age of the suspect -
- b. mental capacity of the suspect -
- c. physical handicaps of the suspect¹⁹⁹ -
- d. deprivation of liberty of the suspect -
- e. factual complexity of the case -
- f. legal complexity of the case -
- g. severity of the sanction that can be imposed -
- h. other circumstances, please specify [...] - Yes. Legal assistance is compulsory in criminal proceedings, with the exception of LECr 520. 5 The suspect may deny the compulsory legal assistance, if his/her detention is due to traffic offences.

061 - Are the costs of obligatory defence covered by the state?

Yes, sometimes.

LECr 121

Every party of a trial will have the obligation to pay the attorney clerk representing them, the lawyer defending them, the informing experts and the compensation to the witnesses they bring (if the experts and witnesses express their claim and the judge accepts it), unless they are entitled to free legal assistance.

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

¹⁹⁸ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

¹⁹⁹ Blindness, deafness et cetera.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

CE 17 3. Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law.

LECr 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

There is no established procedure.

065 - More specifically, who decides whether translation is necessary?

The Judge.

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment - Yes.
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment - Yes.
- f. parts of the case file -
- g. the letter of rights - Yes.
- h. other documents, please specify [...] -

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

LECr 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

LECr 398 with regard to 440 If the suspect does not understand or speak Spanish, an interpreter shall be appointed to assist the questioning and answering. In this case, the statement will be recorded in the language used by the suspect followed by the translation into Spanish.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

There is no established procedure.

075 - More specifically, who decides whether interpretation is necessary?

The judge.

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

No.

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

Yes.

There is a scheme which covers on a 24h basis English, French, German and Arabic.

079 - Is there a scheme for emergency linguistic assistance in courts?

Yes.

Usually through agreements with private companies.

3.2.2 Scope of the right to interpretation

080 (Check any that apply)

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] -

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

UN Convention on the rights of the persons with disabilities (art. 13).

CE art. 14 Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

LECr 398 with regard to 442 Should the suspect be deaf, an interpreter knowing the sign language shall be appointed to assist the questioning and answering.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

LECr 520.2 e) Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

e) Right to have the free assistance of an interpreter when he/she is a foreigner and does not understand nor speak Spanish.

084 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

085 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge²⁰⁰

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

CE 17.3 3. Every person arrested must be informed immediately, and in a way understandable to him or her, of his or her rights and of the grounds for his or her arrest, and may not be compelled to make a statement. The arrested person shall be guaranteed the assistance of a lawyer during police and judicial proceedings, under the terms to be laid down by the law.

LECr 520.2 Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

No.

089 - When does the duty to inform the suspect of this right arise for the first time?

090 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

No.

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

094 - When does the duty to inform the suspect of this right arise?

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally -
- b. in writing -
- c. by a letter of rights -

²⁰⁰ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment -
- b. the detention order -
- c. the reasons for detention - Yes.
- d. the final judgment (sentence) - Yes.
- e. parts of the case file -
- f. other documents, please specify [...] -

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

Art 520.2 a) ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

a)a) Right to keep silence not declaring if he/she does not wish to, to not answer the questions and to state that he/she will only declare at the presence of a judge.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

Art 520.2 ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights

100 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

Art 520.2 ALECr e)

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights

e)Right to have the free assistance of an interpreter when he/she is a foreigner and does not understand nor speak Spanish.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

Art 520.2 ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

d) Right to inform any relative or person he/she decides of the arrest and the custody place where he/she is at any time. The foreigners are entitled to inform the consular services of his/her country.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

Art 520.2 ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights.

105 - When does the duty to inform the suspect of this right arise?

Promptly after arrest

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

Art 520.2 e) ALECr

Every arrested or imprisoned person shall be informed, immediately and in a way he/she understands, of the charges and the reasons of his/her deprivation of liberty, as well as of his/her rights, specially of the following:

e) Right to have the free assistance of an interpreter when he/she is a foreigner and does not understand nor speak Spanish.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Yes.

109 - The right to legal assistance (partially) free of charge:

Yes.

110 - The right to interpretation and the right to translation of documents:

Yes.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Yes.

113 - The right to legal assistance (partially) free of charge:

Yes.

114 - The right to interpretation and the right to translation of documents:

Yes.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Yes.

117 - The right to legal assistance (partially) free of charge:

Yes.

118 - The right to interpretation and the right to translation of documents:

Yes.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Yes.

121 - The right to legal assistance (partially) free of charge:

Yes.

122 - The right to interpretation and the right to translation of documents:

Yes.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -

SWEDEN

CHAPTER 1

THE RIGHT TO LEGAL ADVICE

1.1 Contact

001 - Does a person have the right to contact a lawyer (legal representative) after his arrest?²⁰¹

yes

Chapter 21, Section 3 of the Swedish Code of Judicial Procedure provides that in preparing and conducting his defence, the suspect may be assisted by defence counsel. This right is unconditional regardless of offence (see Fitger, Rättegångsbalken, p. 21:10). See further below.

002 - If so, when can this right be effected:

At a given stage of the investigation or the proceedings, please specify [...]

There is no particular rule governing the right to contact a lawyer as such. In practice the right to contact a lawyer is effected at the latest in connection to the questioning. Under Chapter 23, Section 10, paragraph 4 of the Swedish Code of Judicial Procedure a counsel to a person being questioned in the course of the preliminary investigation has the right to be present during the questioning provided that the presence is not detrimental to the investigation and the counsel meets with the requirements for being a defence counsel.

003 - If so, is there a legal obligation to inform the suspect of his right to contact a lawyer?

Yes.

In connection to the notification of a person that he or she is reasonably suspected of an offence he or she shall also be informed of the right to – already on the investigative stage - be assisted by defence counsel and that a public defence counsel if certain requirements are complied with may be appointed (see Section 12 of the Preliminary Investigation Decree, förundersökningskungörelsen [1947:948]).

004 - If so, when does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings, please specify [...]

See answer above.

005 - If so, how should the suspect be informed of this right? (more than one answer possible)

Orally

006 - Is there a legal obligation to provide the information of the right to contact a lawyer in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment the authority should use an interpreter when needed.

007 - Are there (legal) possibilities to limit the right to contact a lawyer after arrest?

No.

²⁰¹ With arrest is meant the situation that a person is deprived of his liberty and/or is held at the police station for questioning.

008 - If so, please specify on which grounds:

009 - If so, please specify for which period of time?

1.1a Free choice

010 - Does the suspect have the right to legal assistance of his own choosing?

Yes.

The defence counsel is designated by the suspect. If the suspect is under eighteen years of age or suffers from serious mental disturbance, the defence counsel is appointed by the person who has custody of him. If the suspect has appointed an attorney, that attorney is regarded as defence counsel. A person may not serve as defence counsel if he has, or has had, a professional or financial relationship with the suspect and the circumstances are likely to cast doubt on his ability to fulfil the responsibilities applicable to a defence counsel. Foreign nationals or a person who is resident outside the Realm may not act as defence counsel if this is inappropriate having regard to the security of the Realm (see Chapter 21, Section 3, paragraphs 2 and 3 of the Swedish Code of Judicial Procedure).

1.2 Consultation

Is the suspect guaranteed an adequate opportunity to consult with his lawyer?

More specifically, is it guaranteed that:

011 - Consultation (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means?

Yes.

Defence counsel shall be permitted to speak in private with the arrested or detained person; however, defence counsel other than public defence counsel only upon consent of the leader of the inquiry or of the prosecutor, or when the court considers it would neither impede the inquiry nor threaten order and security at the place of detention (see Chapter 21, Section 9 of the Swedish Code of Judicial Procedure).

A consultation with a public defence counsel by telephone must not be supervised (see Section 12 of the Statute on Treatment of arrested and detained persons and others, lagen [1976:371] om behandlingen av häktade och anhållna m.fl.).

012 - Consultation (in person or by telephone) is possible before questioning by the police²⁰²?

Yes.

See answer above. According to a statement made by the Parliamentary Ombudsman (Justitieombudsmannen) in the Annual Report 1960 p. 70 the right to consultation with a public defence counsel does not mean an unconditional right to, at any time, speak in private with the arrested or detained person. The Parliamentary Ombudsman held that it must be determined with respect to the particular circumstances in every case whether a consultation shall be permitted or not. However, with consideration to the importance that the suspect is given the opportunity to speak in private with the defence counsel, a special reason should be required for not granting permission to consultation (see Fitger, Rättegångsbalken, p. 21:37, and TSA 1960 p. 103).

What facilities are there to visit a detained suspect?

More specifically:

013 - Can the lawyer visit his client held at the police station?

Yes.

²⁰² The term 'police' within this questionnaire does not only cover 'regular' police forces but also other authorities such as special investigation services, customs et cetera.

014 - If so, does the lawyer need permission to visit his client held at the police station?

Yes.

In certain cases.

Defence counsel for an arrested or detained person shall not be denied access to such person. Defence counsel shall be permitted to speak in private with the arrested or detained person; however, defence counsel other than public defence counsel only upon consent of the leader of the inquiry or of the prosecutor, or when the court considers it would neither impede the inquiry nor threaten order and security at the place of detention (Chapter 21, Section 9 of the Swedish Code of Judicial Procedure).

The Parliamentary Ombudsman has in the Annual Reports 1983/84 p. 134 held that a defence counsel should not even in the evening be rejected to meet with his client.

015 - If so, are lawyer-client visits at the police station limited in time and/or frequency?

No.

016 - Can the lawyer visit his client detained in prison²⁰³?

Yes.

017 - If so, does the lawyer need permission to visit his client detained in prison?

Yes.

A client detained in prison is allowed to have visitors to the extent it is considered as appropriate. A visit by a member of the Bar Association shall be supervised only if the inmate or the member of the Bar Association makes such a request (see Section 29 of the Statute on Treatment in Prison, lagen [1974:203] om kriminalvård i anstalt).

018 - If so, are lawyer-client visits in prison limited in time and/or frequency?

Yes.

A client detained in prison is allowed to have visitors to the extent it is considered as appropriate (see Section 29 of the Statute on Treatment in Prison, lagen [1974:203] om kriminalvård i anstalt).

019 - Are there possibilities to supervise the oral communication (including telephone conversations) between lawyer and suspect after arrest?

Yes.

If so:

019a - Please specify, who can order this surveillance:

A consultation with a public defence counsel by telephone must not be supervised (see Section 12 of the Statute on Treatment of Arrested and Detained Persons and Others – lagen [1976:371] om behandlingen av häktade och anhållna m.fl.). However, it is possible to supervise the oral communication between lawyer and suspect after arrest if the lawyer is not a public defence counsel. A detained (häktad), arrested (anhållen) or apprehended (gripen) person can for security reasons be denied to have a conversation on the telephone. A conversation on the telephone can also be denied if there is a risk that evidence is removed or the inquiry into the matter in any other respect is complicated. If it is required for security reasons or to impede that evidence is removed or the inquiry into the matter in any other respect is complicated, a phone call may be supervised.

If a person is detained, arrested or apprehended because of suspicion of having committed an offence an order regarding surveillance is to be decided by the prosecutor if there is a risk of impediment of the

²⁰³ Prison – or other detention facility where the suspect can be deprived of his liberty awaiting his trial.

inquiry into the matter at issue by removing evidence or in any other way. The prosecutor or leader of the investigation may only order on the issue if the court has ordered that the detained person's contact with the outside world may be restricted (see Section 16 of the Statute on Treatment of Arrested and Detained Persons and Others – lagen [1976:371] om behandlingen av häktade och anhållna m.fl.). Decision in other cases are made by the Prison and Probation Service (Kriminalvården) (see Section 18 of the justmentioned Statute).

019b - Please specify, on which grounds surveillance can be ordered:

See answer to question 19 a.

019c - Please specify, for which period of time surveillance can be ordered:

As indicated above no particular period of time is prescribed by law.

019d - Please specify, the kind of surveillance that can be ordered:

See answer to question 19 a.

019e - Please specify, any legal remedies provided to the defence in this respect:

A decision by the leader of the inquiry or the prosecutor can be appealed to a District Court or, if the case has been appealed to the Appeal Court or the Supreme Court, that court (see Section 17 of the Statute on Treatment of arrested and detained persons and others, lagen [1976:371] om behandlingen av häktade och anhållna m.fl.). A decision by the Prison and Probation Service can be appealed to a County Administrative Court.

020 - Are there legal possibilities to supervise the written communication between lawyer and suspect after arrest?

Yes.

If so:

020a - Please specify, who can order this surveillance:

Written communication between a public defence counsel and a detained, arrested or apprehended person must never be supervised (see Section 9, paragraph 1 of the of the Statute on Treatment of arrested and detained persons and others, lagen [1976:371] om behandlingen av häktade och anhållna m.fl.). However, written communication with other defence counsels than public defence counsels may under certain conditions be supervised (see further Section 9, paragraph 2 of the justmentioned Statute).

020b - Please specify, on which grounds surveillance can be ordered:

For security reasons or if there is a risk that evidence is removed or the inquiry into the matter in any other respect is complicated.

020c - Please specify, for which period of time surveillance can be ordered:

As indicated above no particular period of time is prescribed by law.

020d - Please specify, the kind of surveillance that can be ordered:

See answer above.

020e - Please specify, any legal remedies provided to the defence in this respect:

A decision by the leader of the inquiry or the prosecutor can be appealed to a District Court or, if the case has been appealed to the Appeal Court or the Supreme Court, that court (see Section 17 of the Statute on Treatment of arrested and detained persons and others, lagen [1976:371] om behandlingen av häktade och anhållna m.fl.).

A decision by the Prison and Probation Service can be appealed to a County Administrative Court.

Anybody who feels that he or she or someone else has been treated wrongly or unjustly by a public authority (such as the Prison and Probation Service) can lodge a complaint to the The Parliamentary Ombudsman (Justitieombudsmannen). The Parliamentary Ombudsmen can also inaugurate inquiries on his or her own initiative. The work of the Parliamentary Ombudsman also involves making inspections of various public authorities or facilities(such as a prison or remand prison).

1.3 Questioning

021 - Does the lawyer have the right to be present throughout questioning (police; prosecutor; investigating judge; other official) if the suspect wishes it?

Yes.

Chapter 23, Section 10 of the Swedish Code of Judicial Procedure stipulates that any person questioned by the police during a preliminary investigation has a right to have counsel present when giving a statement to the police, provided that this is not to the detriment of the investigation, and the counsel fulfills the requirements to be a defence counsel. The right to counsel encompasses, among others, those who are not yet reasonably suspected of having committed a crime but who may become a suspect, and witnesses.

022 (Check any that apply)

If so, does this right cover:

- a. questioning by the police - Yes.
- b. questioning by the prosecutor - Yes.
- c. questioning by the investigating judge -
- d. questioning by other officials, please specify [...] - Yes. E.g. customs officials and officials from the Swedish Coast Guard

023 (Check any that apply)

If so, what are the competences of the lawyer during questioning?

More specifically, does the lawyer have the right to:

- a. intervene -
- b. ask questions - Yes.
- c. make remarks - Yes.
- d. consult with his client in private - Yes.
- e. other competences, please specify [...] -

024 - Is there a legal obligation to inform the suspect on his right to have a lawyer present during questioning?

Yes.

In connection to the notification to a person that he or she is reasonably suspected of an offence he or she shall also be informed of the right to – already on the investigative stage - be assisted by defence counsel and that a public defence counsel if certain requirements are complied with may be appointed (see Section 12 of the Decree concerning the Preliminary Investigation, förundersökningskungörelsen [1947:948]).

In practice there is an information sheet which has been issued by the Public Prosecutors Office and the National Police Board. The information sheet has been translated into 42 languages other than Swedish. The sheet is accessible at every police station and is instructed to be delivered to a person when he enters the arrest. The information sheet is also instructed to be put up in the arrest. The information sheet contains information for those suspected of a crime and subsequently detained. The information

sheet contains information on the right to receive aid of a defence attorney who under certain conditions can be paid by the state.

025 - If so, when does the duty to inform the suspect of this right arise for the first time?

At a given stage of the investigation or the proceedings

See answer to question 024.

026 (Check any that apply)

If so, how should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights - Yes.

027 - Is there a legal obligation to provide the information on the right to have a lawyer present during questioning in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

028 - Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?

Yes.

Under Chapter 35, Section 3 of the Swedish Code of Judicial Procedure the court shall determine the evidentiary value of the admission with respect to the particular circumstances. Accordingly it is not possible to generally determine the evidential value of such a confession.

029 - Is the questioning of the suspect audio recorded?

Sometimes.

Foremost when it comes to more severe crimes.

030 - If so, how many copies of the audio recording are made?

The defender and the prosecutor receive one copy each, and another one is kept for the archives. Usually what the parties receive is a printed version of the recording. When the preliminary investigation is ended and prosecution is instituted the documents are official and the public have the right to access.

031 - If so, who is entitled to receive a copy of the audio recording?

Any person has the right to receive a copy of the audio recording by the public authority keeping the audio recording provided that the audio recording is not secret. Information which is referable to e.g. the preliminary investigation in a criminal proceeding may in earlier stages of the proceedings if certain conditions are met be secret (Chapter 5, Section 1 of the Secrecy Act [1980:100]).

Information concerning an individual's personal or economical situation may under certain conditions be secret (Chapter 9, Section 17 of the Secrecy Act [1980:100]). Secrecy to protect an individual person does not apply in relation to that person. He or she can furthermore waive secrecy, completely or partially, so that the information may be provided to other individuals or to an authority.

032 - Is the questioning of the suspect video recorded?

Sometimes.

E.g. when the suspect is injured or his clothes are damaged.

033 - If so, how many copies of the video recording are made?

See answer to question 030.

034 - If so, who is entitled to receive a copy of the video recording?
See answer to question 031.

CHAPTER 2

THE RIGHT TO LEGAL ASSISTANCE (PARTIALLY) FREE OF CHARGE

035 - Does the suspect have the right to legal assistance (partially) free of charge?

Yes.

If a suspect under arrest or detained so requests, a public defence counsel shall be appointed for him. A public defence counsel shall also be appointed upon request for a person who is suspected of a offence in respect of which a less severe sentence than six months imprisonment is not prescribed.

A public defence counsel shall also be appointed

1. if a defence counsel is needed by the suspect in connection with the inquiry into the offence,
2. if a defence counsel is needed in view of doubt concerning which sanction shall be chosen and there is reason to impose a sentence for a sanction other than a fine or conditional sentence or such sanctions linked together, or
3. if there are otherwise special reasons relating to the personal circumstances of the suspect or the subject of the case.

If the suspect is represented by defence counsel that he designated, no public supporting defence counsel shall be appointed (Chapter 21, Section 3 a of the Swedish Code of Judicial Procedure).

2.1 Criteria

Which criteria does the suspect have to meet to qualify for legal assistance (partially) free of charge?

More specifically,

036 - Is there a merits test²⁰⁴?

Yes.

See answer to question 035.

037 - Is there a means test²⁰⁵?

No.

038 (Check any that apply)

If there is a means test, are there any rules on how the suspect should prove that he is unable to pay for legal assistance himself?

More specifically, are there:

- a. standardised application forms -
- b. any rules on what documentation should be provided, please specify rules [...] -
- c. other rules, please specify [...] -

²⁰⁴ A merits test is a mechanism to check whether professional legal aid is in the interest of justice (and thus necessary to safeguard the fairness of the proceedings) given the particular circumstances of the case and/or the suspect. Examples of such particular circumstances are inter alia the fact that the suspect appears not to be able to understand the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition or the fact that he is formally accused of having committed a criminal offence which involves a complex factual or legal situation.

²⁰⁵ A means test is a mechanism providing uniform financial criteria which is used to evaluate whether the person applying for legal assistance free of charge is unable to cover (all or part of) the defence costs.

039 - Are there other legal criteria which the suspect has to meet to qualify for legal assistance (partially) free of charge?

No.

2.2 Procedure

040 - Is there a legal obligation to inform the suspect of his right to legal assistance (partially) free of charge?

Yes.

In connection to the notification to a person that he or she is reasonably suspected of an offence he or she shall also be informed of the right that to – already on the investigative stage - be assisted by defence counsel and that a public defence counsel if certain requirements are complied with may be appointed (see Section 12 of the Decree concerning the Preliminary Investigation, förundersökningskungörelsen [1947:948]).

In practice there is an information sheet which has been issued by the Public Prosecutors Office and the National Police Board. The information sheet has been translated into 42 languages other than Swedish. The sheet is accessible at every police station and is instructed to be delivered to a person when he enters the arrest. The information sheet is instructed to be put up in the arrest. The information sheet contains information for those suspected of a crime and subsequently detained. The information sheet contains information on the right to receive aid of a defence attorney who under certain conditions can be paid by the state.

041 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

See answer to question 040.

042 (Check any that apply)

How should the suspect be informed of this right?

- a. Orally - Yes.
- b. In writing -
- c. By a letter of rights - Yes.

043 - Is there a legal obligation to provide the information on the right to legal assistance (partially) free of charge in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

044 (Check any that apply)

Who decides on the request for legal assistance?

- a. police -
- b. prosecutor -
- c. judge - Yes.
- d. legal aid board -
- e. other authority, please specify authority [...]

045 - Is there a legal time limit for deciding on the request for legal assistance (partially) free of charge?

Yes.

The court shall consider the appointment of a public defence counsel upon request, or when the court otherwise considers reason therefor (Chapter 21, Section 4, paragraph 2 the Swedish Code of Judicial Procedure).

The provision is taken to mean that a public defence counsel shall be appointed without delay (see Fitger, Rättegångsbalken, 21:23).

046 - When a request is denied, is there a legal remedy?

Yes.

The decision may be appealed to the Appeal Court. According to Chapter 49, Section 3, paragraph 1 of the Swedish Code of Judicial Procedure the final decision of a district court may be appealed against, unless otherwise provided. If the decision is not final it is, inter alia, provided in Chapter 49, Section 5 of the Code that a decision of a district court may be appealed separately if the district court in the decision rejected a request for counsel or defence counsel, or appointing as such a person other than the one proposed by the party.

047 (Check any that apply)

When a request is approved, what factors are taken into account to decide which lawyer should be appointed?

- a. preference of the suspect -
- b. specialisation of the lawyer -
- c. availability of the lawyer -

d. other factors, please specify [...] - Yes. Only an advocate, who is considered suitable for the assignment,

shall be appointed as public defence counsel. For special reason, another suitable person whose qualifications make him eligible for appointment as a judge may be appointed public defence counsel. The court should seek to engage advocates who regularly function as attorneys before the court.

When the suspect proposes as his public defence counsel a person competent to serve in that capacity, that person shall be appointed, unless his engagement would substantially increase costs or special

- z. circumstances indicate that the appointment should not be made (Chapter 21, Section 5 of the Swedish Code of Judicial Procedure).

048 (Check any that apply)

When a request is approved, who decides which lawyer should be appointed?

- a. Prosecutor -
- b. Judge - Yes.
- c. lawyer's professional organisation (bar) -
- d. legal aid board -
- e. other authority, please specify authority [...] -

2.3 Financial matters

049 - Is providing legal assistance (partially) free of charge remunerated by the state?

Yes.

050 - If so, how is remuneration provided

In an other way.

Public defence counsel shall receive reasonable compensation from public funds for work and time and for disbursements made in connection with the assignment. Compensation shall be determined on the basis of, as a starting point, the time taken that is reasonable with regard to the nature of and extent of the assignment and applying the hourly costs norms determined by the government.

The hourly compensation may deviate from the hourly costs norm if it is warranted by reason of the skill and care exhibited by counsel or other significant circumstances.

The government or the authority designated by the government shall prescribe the fee schedule to be followed in certain cases and issue rules on the computation of compensation for time lost.

Public defence counsel shall not demand or receive further remuneration from the suspect. If this has nevertheless occurred any such arrangement is void and the public defence counsel must repay to the suspect what he or she has received (Chapter 21, Section 10 of the Swedish Code of Judicial Procedure).

051 - If so, are there any minimum and/or maximum amounts when assisted by a lawyer (partially) free of charge?

No.

052 - Is the suspect obliged to pay a financial contribution?

Yes.

If the defendant is convicted in a case instituted by the prosecutor, the defendant shall reimburse the state for public funds spent pursuant to the court decision on remuneration for his defence counsel. However, the defendant shall not be liable for costs not reasonably necessary to the inquiry or for costs occasioned by the carelessness or oversight of a person other than the defendant, his attorney, or a defence counsel chosen by him. As a basic rule the defendant shall not be required to pay more of the costs for the defence counsel than what he would have had to pay as the legal aid charge if legal aid had been granted under the Legal Aid Act (1996:1619). The sum that the defendant must pay may be adjusted or waived, if appropriate in light of the defendant's criminality or his personal and financial circumstances. If the sum the defendant would be called upon to pay does not exceed a minimum amount prescribed by the Government, no obligation to pay shall be imposed (Chapter 31, Section 1 of the Swedish Code of Judicial Procedure).

053 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms?

Please use your national currency.

Please specify your currency if it is not the Euro.

The cost for public defence counsels in 2008 was 914 000 000 kr (Swedish Krona). The cost for an aggrieved party counsel in 2008 was 169 000 000 kr.

054 - What is the national budget for legal assistance (partially) free of charge in criminal proceedings as a percentage of the total criminal justice budget?

Please use your national currency.

Please specify your currency if it is not the Euro.

The cost for public defence counsels were 914 000 000 kr (Swedish krona) in 2008. The same year, the costs for counsels for aggrieved persons were 169 000 000 kr. There are no statistics on the total criminal justice budget.

055 - What is the size of the population of your country?

The size of the population in Sweden as of 28 Februari 2009 was 9 263 872.

2.4 Quality of legal aid

056 - Are there any special qualifications for providing legal assistance (partially) free of charge?

Yes.

See answer to question 047.

057 - Are there any mechanisms to control the quality of legal assistance (partially) free of charge?

Yes.

058 (Check any that apply)

If so, what kind of quality control exists?

a. supervision by the government/legal aid board - Yes.

b. supervision by the bar - Yes.

c. other methods of quality control, please specify [...] -

2.5 Legal assistance (partially) free of charge in special circumstances

059 - Are there cases of obligatory defence²⁰⁶?

Yes.

060 (Check any that apply)

Which circumstances are grounds for obligatory defence?

a. age of the suspect -

b. mental capacity of the suspect -

c. physical handicaps of the suspect²⁰⁷ -

d. deprivation of liberty of the suspect -

e. factual complexity of the case -

f. legal complexity of the case -

g. severity of the sanction that can be imposed -

h. other circumstances, please specify [...] - Yes. In certain instances a public defence

counsel may be obligatory. In practice, a public defence counsel is seldom appointed against the suspect's or defendant's wish. The particular grounds for obligatory defence is not prescribed by law (see however Chapter 21, Section 3 a of the Swedish Code of Judicial Procedure referred to above).

061 - Are the costs of obligatory defence covered by the state?

Yes, always.

²⁰⁶ Obligatory defence covers all situations in which professional legal assistance in criminal cases is obliged by law or by a judicial decision.

²⁰⁷ Blindness, deafness et cetera.

See Chapter 21, Section 10 of the the Swedish Code of Judicial Procedure referred to above. The defendant may however be liable to reimburse the state for public funds spent pursuant to the court decision on remuneration for his defence counsel (see Chapter 31, Section 1 of the Swedish Code of Judicial Procedure referred to above).

062 - Is there a possibility to appoint an independent counsel, such as amicus curiae or special advocate?

No.

CHAPTER 3

THE RIGHT TO TRANSLATION OF DOCUMENTS AND THE RIGHT TO INTERPRETATION

3.1 The right to translation

063 - When the suspect does not understand the language in which certain documents are drawn up, does he have the right to be provided with a written translation?

Yes.

Pursuant to Chapter 33, Section 9, paragraph 1 of the Swedish Code of Judicial Procedure the court may, if required, provide for the translation of documents filed with or dispatched from the court. The second paragraph of the provision provides that the court shall provide for the translation of a document in a criminal proceeding or the most important parts of it, if the document shall be sent any residing in another states within EES or in Switzerland and there is reason to believe that the person does not understand the language used in the document. The document shall be translated into the language used in the other state or if the authority knows that the person does not understand this language to another language that the person understands.

3.1.1 Procedure

064 - Is there an established procedure for ascertaining whether there is a need for translation of documents in criminal proceedings?

Yes.

Information about the need for the translation is given to court by the prosecution and/or the police.

065 - More specifically, who decides whether translation is necessary?

The judge who is responsible for dealing with the case or other court officials.

066 - Is translation provided at the state's expense?

Yes.

067 - Are there any standard fees for legal translation of documents?

No.

3.1.2 Scope of the right to translation

068 (Check any that apply)

Does the suspect have the right to be provided with a written translation of:

- a. the charge -
- b. the indictment -
- c. the detention order -
- d. the reasons for detention -
- e. the final judgment -
- f. parts of the case file -
- g. the letter of rights -
- h. other documents, please specify [...] - Yes. It is not possible to answer the question in general terms. See further the answer to question 063.

3.1.3 Information on the right to translation

069 - Is there a legal obligation to inform the suspect on his right to translation?

Yes.

070 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

See answer to question 069. It shall also be mentioned that enquiries made by people shall be answered as soon as possible.

071 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

072 - Is there a legal obligation to provide the information on the right to translation in a language the suspect understands?

Yes.

See answer to question 069. It should also be reiterated that when an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

3.2 The right to interpretation

073 - When the suspect does not understand the language used in the proceedings/in court does he have the right to have the assistance of an interpreter?

Yes.

Chapter 5, Section 6, paragraph 1 of the Swedish Code of Judicial Procedure provides that if a party, a witness, or any other person who shall be heard by the court is incapable of understanding and speaking Swedish, an interpreter may be engaged to assist the court.

It shall be noted that the wording "may" is not to be understood as if the use of an interpreter is not compulsory. It is regarded as compulsory to engage an interpreter to assist the court when necessary.

3.2.1 Procedure

074 - Is there an established procedure for ascertaining whether there is a need for interpretation in criminal proceedings?

Yes.

Information about the need for the translation is given to court by the prosecution who is informed by the police.

075 - More specifically, who decides whether interpretation is necessary?

The judge responsible for dealing with the case.

076 - Is interpretation provided at the state's expense?

Yes.

077 - Are there any standard fees for legal interpretation?

Yes.

Pursuant to the ordinance 1979:291 standard fees are to be decided by the National Court Administration. The standard fees for interpreters for 2009 are decided in regulation 2008:8 decided by the National Court Administration (see further http://www.dom.se/templates/DV_InfoPage____9260.aspx)

078 - Is there a scheme for emergency linguistic assistance for suspects being held for questioning at the police station?

No.

079 - Is there a scheme for emergency linguistic assistance in courts?

No.

3.2.2 Scope of the right to interpretation

080 *(Check any that apply)*

When the suspect does not understand or speak the language used in the proceedings/in court, is an interpreter present at:

- a. the consultation of the suspect with his lawyer - Yes.
- b. the questioning of the suspect by the police - Yes.
- c. the trial - Yes.
- d. other procedural occasions/activities/hearings, please specify [...] - Yes. An interpreter is present at other hearings taking place in the course of the criminal proceedings, such as detention hearings.

081 - Are there any special provisions/arrangements for suspects who are visually impaired?

Yes.

Pursuant to Chapter 33, Section 9, paragraph 3 of the Swedish Code of Judicial Procedure the provisions regarding translation (Chapter 33, Section 9, paragraphs 1 and 2) shall be applied also as to transfer of Braille to ordinary writing or vice versa.

082 - Are there any special provisions/arrangements for suspects who are hearing impaired?

Yes.

Chapter 5, Section 6, paragraph 3 provides that if the person to be heard has a serious hearing or speaking impediment, an interpreter may be engaged to assist the court.

3.2.3 Information on the right to interpretation

083 - Is there a legal obligation to inform the suspect on his right to interpretation?

Yes.

There is always a service duty of the authorities. Each authority shall provide information, guidance, advice and similar assistance to all persons concerning matters falling within the scope of its functions.

In practice there is an information sheet which has been issued by the Public Prosecutors Office and the National Police Board. The information sheet has been translated into 42 languages other than Swedish. The sheet is accessible at every police station and is instructed to be delivered to a person when he enters the arrest. The information sheet is instructed to be put up in the arrest. The information sheet contains information for those suspected of a crime and subsequently detained. It contains information on the right to receive the assistance of an interpreter during interrogations, as needed.

084 - When does the duty to inform the suspect of this right arise?

At a certain stage of the investigation or the proceedings

See answer to question 083.

085 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights - Yes.

086 - Is there a legal obligation to provide the information on the right to interpretation in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

CHAPTER 4

OTHER FUNDAMENTAL GUARANTEES AND THE RIGHT TO BE INFORMED ON THEM

4.1 Information on the charge²⁰⁸

087 - Does the suspect have the right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

Chapter 23, Section 18 of the Swedish Code of Judicial Procedure provides that when the preliminary investigation has advanced so far that a person is reasonably suspected of committing the offence, he shall, when he is heard, be notified of the suspicion.

It follows from Chapter 24, Section 9 of the Swedish Code of Judicial Procedure that when a person is apprehended or arrested or when an order for arrest is executed, he shall be informed of the offence for which he is suspected and the grounds for his arrest.

In practice there is an information sheet which has been issued by the Public Prosecutors Office and the National Police Board. The information sheet has been translated into 42 languages other than Swedish. The sheet is accessible at every police station and is instructed to be delivered to a person when he enters the arrest. The information sheet is instructed to be put up in the arrest. The information sheet contains information for those suspected of a crime and subsequently detained. It contains information on the right to receive information about the suspicion and the reasons for the detainment.

088 - If so, is there a legal obligation to inform the suspect on his right to be informed on the charge (nature and cause of the accusation against him)?

Yes.

See answer to question 087.

089 - When does the duty to inform the suspect of this right arise for the first time?

Even in situations without arrest, at a given stage of the investigation or the proceedings

See answer to question 087.

090 (Check any that apply)

How should the suspect be informed of this right?

a. orally - Yes.

b. in writing -

c. by a letter of rights - Yes.

091 - Is there a legal obligation to provide the right to be informed on the charge in a language the suspect understands?

Yes.

See answer to question 043.

4.2 Information on access to the file

092 - Does the suspect have the right to have access to the file of the criminal investigation?

Yes.

²⁰⁸ The term 'charge' in this context is not restricted to any formal accusation but to the (oral and/or written) information which is provided to a person in the very beginning of the criminal investigation or proceedings starting from the point a person is arrested and/or interrogated and/or in another way (f.i. search) becomes aware of the fact that there is a suspicion that he has committed a criminal offence.

To the extent possible without impediment to the investigation, the suspect and his defence counsel shall be informed continuously of developments in the investigation (Chapter 23, Section 18, paragraph 1 of the Swedish Code of Judicial Procedure). As soon as the decision to prosecute has been made the suspect or his defence counsel, on request, shall receive a copy of the record or notes of the preliminary investigation. If a public defence counsel has been appointed for the suspect, a copy shall be delivered or sent to him without special request (Chapter 23, Section 21, paragraph 4 of the Swedish Code of Judicial Procedure).

It should also be reiterated that any person has the right to have access to the file of the criminal investigation provided that the information is not secret. Information which is referable to e.g. the preliminary investigation in a criminal proceeding may in earlier stages of the proceedings if certain conditions are met be secret (Chapter 5, Section 1 of the Secrecy Act [1980:100]). A party in a case or matter before a court or other authority is, in principle, entitled to see all information in the case or matter. It is only in exceptional cases that something can be kept secret from a party. Judgements and decisions must always be provided to the parties (see Chapter 14 Section 5 of the Secrecy Act [1980:100]).

093 - If so, is there a legal obligation to inform the suspect on his right to have access to the file of the criminal investigation?

Yes.

There is always a service duty of the authorities. This service duty means that the suspect shall receive information on his or her right to have access to the file when needed or when he or she makes a requests.

094 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings Enquiries made by people shall be answered as soon as possible

095 (Check any that apply)

How should the suspect be informed of this right?

- a. orally - Yes.
- b. in writing -
- c. by a letter of rights -

096 - Is there a legal obligation to provide the right to have access to the results of the investigation in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

097 (Check any that apply)

More specifically, does the suspect have the right to be provided with a written version of:

- a. the indictment -
- b. the detention order -
- c. the reasons for detention -
- d. the final judgment (sentence) -
- e. parts of the case file -

f. other documents, please specify [...] - Yes. As soon as the decision to prosecute has been made the suspect or his defence counsel, on request, shall receive a copy of the record or notes of the preliminary investigation. If a public defence counsel has been appointed for the suspect, a copy shall be delivered or

sent to him without special request (Chapter 23, Section 21, paragraph 4 of the Swedish Code of Judicial Procedure).

As a basic rule the suspect has the right to be provided with a copy of all documents in the case file. There might be restrictions. Information which is referable to e.g. the preliminary investigation in a criminal proceeding is secret (Chapter 5, Section 1 of the Secrecy Act [1980:100]).

4.3 Information on the right to remain silent

098 - Does the suspect have a right to remain silent during criminal investigations and proceedings?

Yes.

The right to remain silent follows from decisions of the European Court of Human Rights. The Convention on Human Rights and Fundamental Freedoms is applicable as law in Sweden.

099 - If so, is there a legal obligation to inform the suspect on his right to remain silent?

Yes.

The suspect shall be informed about his right to remain silent when needed or when he or she makes a requests.

100 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings Enquiries made by people shall be answered as soon as possible.

101 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** -
- c. by a letter of rights** -

102 - Is there a legal obligation to provide the information on the right to remain silent in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

4.4 Information on the right to call and examine witnesses/experts

103 -- Does the suspect have the right to call and examine witnesses?

Yes.

The suspect and the defence counsel have the right to state what inquiries they consider desirable and otherwise consider to be necessary. A notice concerning these matters shall be delivered or sent to the suspect and his defence counsel upon which they shall be afforded a reasonable time for counselling. Prosecution may not be decided before this is done (Chapter 23, Section 18, paragraph 1 of the Swedish Code of Judicial Procedure).

It is implied in the Swedish Code of Judicial Procedure that the suspect has the right to call and examine witnesses to be heard at the main hearing.

104 - If so, is there a legal obligation to inform the suspect on his right to call and examine witnesses/experts?

Yes.

The suspect and the defence counsel have the right to state what inquiries they consider desirable and otherwise consider to be necessary. A notice concerning these matters shall be delivered or sent to the suspect and his defence counsel upon which they shall be afforded a reasonable time for counselling. Prosecution may not be decided before this is done (Chapter 23, Section 18, paragraph 1 of the Swedish Code of Judicial Procedure).

There is no legal obligation to inform the suspect on his right to call and examine witnesses/experts at the main hearing. However, pursuant to the main rule in Chapter 45, Section 10 of the Swedish Code of Judicial Procedure in the summons, the court shall direct the defendant to specify, either orally or in writing, the evidence he invokes and what he intends to prove by each item of evidence. Although an explicit right to information about the right to inform the suspect on his right to call and examine witnesses/experts is not enshrined in the Swedish Code of Judicial Procedure, in fact the information is provided when the indictment and summons are served with the suspect.

105 - When does the duty to inform the suspect of this right arise?

Even in situations without arrest, at a given stage of the investigation or the proceedings

The suspect should be informed about his or her right to state what inquiries he or she considers desirable and otherwise considers to be necessary. A notice concerning these matters shall be delivered or sent to the suspect and to his defence counsel upon which they shall be afforded a reasonable time for counselling. Prosecution may not be decided before this is done (see Chapter 23, Section 18, paragraph 1 of the Swedish Code of Judicial Procedure).

106 (Check any that apply)

How should the suspect be informed of this right?

- a. orally** - Yes.
- b. in writing** - Yes.
- c. by a letter of rights** -

107 - Is there a legal obligation to provide the information of the right to call and examine witnesses/experts in a language the suspect understands?

Yes.

When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed.

CHAPTER 5

EUROPEAN ARREST WARRANT AND OTHER MUTUAL RECOGNITION INSTRUMENTS

5.1 With respect to the European Arrest Warrant: are the same rights as mentioned in Chapter 1-4 applicable to EAW proceedings?

108 - The right to legal advice:

Partly

The same procedural rights apply as during an ordinary Swedish preliminary investigation and trial. The answers under Chapter 1-4 are therefore also relevant here.

109 - The right to legal assistance (partially) free of charge:

Partly.

The same procedural rights apply as during an ordinary Swedish preliminary investigation and trial. The answers under Chapter 1-4 are therefore also relevant here. Please be advised that this answer applies also to the answer to question 111. Because the structure of the questionnaire it is not possible to provide the answer there.

110 - The right to interpretation and the right to translation of documents:

Partly.

The same procedural rights apply as during an ordinary Swedish preliminary investigation and trial. The answers under Chapter 1-4 are therefore also relevant here.

111 - The right to information concerning fundamental procedural rights:

Yes.

111b (Check any that apply)

partly, please specify:

- | | |
|---|--------|
| a. information on the charge | - Yes. |
| b. information on access to the file | - Yes. |
| c. information on the right to remain silent | - Yes. |
| d. information on the right to call/examine witnesses and experts | - Yes. |

5.2 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

112 - The right to legal advice:

Partly.

Partly.

The framework Decisions in question has not been implemented yet.

113 - The right to legal assistance (partially) free of charge:

Partly.

Partly.

The framework Decisions in question has not been implemented yet.

114 - The right to interpretation and the right to translation of documents:

Partly.

The framework Decisions in question has not been implemented yet. Please be advised that this answer is relevant also to the answer under question 115. Because the structure of the questionnaire it is not possible to provide the answer there.

115 - The right to information concerning fundamental procedural rights:

Yes.

115b (Check any that apply)

partly, please specify:

- a. information on the charge - Yes.
- b. information on access to the file - Yes.
- c. information on the right to remain silent - Yes.
- d. information on the right to call/examine witnesses and experts - Yes.

5.3 With respect to the Framework Decision on the execution in the European Union of orders freezing property of evidence: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

116 - The right to legal advice:

Partly.

The Swedish procedural rights that apply in the context of securing of evidence and the seizure of property is also relevant here, see Chapter 1-4.

117 - The right to legal assistance (partially) free of charge:

Partly.

The Swedish procedural rights that apply in the context of securing of evidence and the seizure of property is also relevant here, see Chapter 1-4.

118 - The right to interpretation and the right to translation of documents:

Partly.

The Swedish procedural rights that apply in the context of securing of
The Swedish procedural rights that apply in the context of securing of evidence and the seizure of property is also relevant here, see Chapter 1-4. Please be advised that this answer is relevant also to the answer under question 119. Because the structure of the questionnaire it is not possible to provide the answer there.

119 - The right to information concerning fundamental procedural rights:

Yes.

119b. (Check any that apply)

partly, please specify:

- a. information on the charge - Yes.
- b. information on access to the file - Yes.
- c. information on the right to remain silent - Yes.
- d. information on the right to call/examine witnesses and experts - Yes.

5.4 With respect to the Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders: are the same rights as mentioned in Chapter 1-4 applicable to these proceedings?

120 - The right to legal advice:

Partly.

The framework Decision in question has not been implemented yet.

121 - The right to legal assistance (partially) free of charge:

Partly.

The framework Decision in question has not been implemented yet.

122 - The right to interpretation and the right to translation of documents:

Partly

The framework Decision in question has not been implemented yet. Please be advised that this answer is relevant also to the answer under question 123. Because the structure of the questionnaire it is not possible to provide the answer there.

123 - The right to information concerning fundamental procedural rights:

Yes.

123b. (Check any that apply)

partly, please specify:

- a. information on the charge -
- b. information on access to the file -
- c. information on the right to remain silent -
- d. information on the right to call/examine witnesses and experts -